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SUMMARY RECORD OF THE 18th MEETING

Chairman: Mr. ZARIF (Islamic Republic of Iran)

later: Mrs. FLORES (Uruguay)
(Vice-Chairman)

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The meeting was called to order at 3.05 p.m.

ANNOUNCEMENT CONCERNING SPONSORSHIP OF DRAFT RESOLUTIONS

1. The CHAIRMAN announced that the Russian Federation had become a sponsor of draft resolution A/C.6/47/L.2/Rev.1, Thailand had become a sponsor of draft resolution A/C.6/47/L.4, and the Libyan Arab Jamahiriya and Senegal had become sponsors of draft resolution A/C.6/47/L.5.

AGENDA ITEM 133: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued) (A/47/33, A/47/67, A/47/60-S/23329, A/47/516)

2. Mr. KABIR (Bangladesh) said the principles embodied in the Charter of the United Nations had guided the comity of nations through the difficult times of confrontation and mistrust which had marked the cold war. The end of that period had ushered in an era of hope for a new world order characterized by democracy, freedom, peace and security. Unfortunately, regional conflicts, racial and ethnic tensions and other undesirable irritants had emerged to cloud mankind's common dream of a trouble-free world. The nations of the world were looking to the United Nations to contain and resolve those problems and to allow world-wide peace and security to thrive for the benefit for all peoples. In order to achieve those objectives, the Organization needed to undertake new initiatives and define innovative remedies. It could only do so, however, if Member States were firm in their determination to strengthen their Organization and, in view of the changed realities of the day, to look afresh at the provisions of the Charter.

3. The wind of freedom and democracy currently sweeping across the world must also be permitted to touch the great institution of the United Nations, whose Members must be given equal opportunity for democratic participation in its activities. The new international reality should also be reflected in the composition of the Security Council. Such changes, however, should not compromise the effectiveness of that organ but rather enhance its capacity to arrive at swift and just decisions in times of sudden crisis. In that connection, consideration should be given to ways of achieving a realistic balance in the use of the power of veto in order to make the actions of the Council more transparent.

4. The Secretary-General's timely report, "An agenda for peace", contained proposals concerning preventive diplomacy, peacemaking, peace-keeping, peace-building, and cooperation with regional arrangements and organizations for the maintenance of international peace and security. His delegation welcomed the Secretary-General's views on the role of regional organizations in securing and maintaining peace and security. Regional organizations, arrangements and associations were uniquely placed not only to reduce tension and initiate appropriate moves towards the resolution of local conflicts but also to strengthen regional security. Such organizations, moreover, had been

(Mr. Kabir, Bangladesh)

moulded through the years into cohesive structures encompassing socio-economic cooperation and development within member countries, and in some instances had exercised a moderating influence on arms control within their regions. His delegation accordingly welcomed working paper A/AC.182/L.72 entitled "Draft declaration on the improvement of cooperation between the United Nations and regional organizations" (A/47/33, para. 39). During the deliberations on the paper, individuals with expertise and experience in that field should be invited to assist the Committee.

5. Bangladesh was particularly interested in working paper A/AC.182/L.73 on the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter (A/47/33, para. 109). The sanctions imposed on Iraq by Security Council resolution 661 (1990) had had an adverse impact on his country's frail economy. Along with 21 other countries which were seriously affected by the sanctions, his Government had appealed without success to the President of the Security Council for assistance under Article 50 of the Charter. Before Member States were called upon to confront a similar crisis in future, serious consideration should be given to the establishment of a mechanism for providing swift and adequate assistance under Article 50. Financial institutions such as IMF and the World Bank could be requested to provide assessments of the financial loss suffered. Such a mechanism would encourage third party States to cooperate more readily in the implementation of sanctions in future.

6. While his delegation was inclined to support the suggestion that the Secretary-General should be authorized to seek legal advice from the International Court of Justice on specific legal issues, consideration should be given to the question of whether such authorization was permissible under the Charter, and, if so, what its implications would be for the United Nations and for the relationship between the Organization and the International Court of Justice. The prior views of the International Court of Justice might facilitate a consensus on that question.

7. The recent avalanche of changes in the international arena demanded that the Organization should adapt itself in order to face the new challenges effectively. The enlargement of the community of nations, the appearance of strong and independent-minded regional organizations, the stark economic differences between North and South, and, in particular, the increasing number of least developed countries, were valid reasons for a review of specific provisions of the Charter. His delegation therefore welcomed all initiatives aimed at strengthening the United Nations and allowing it to continue to perform its functions satisfactorily through to the twenty-first century.

8. Mr. ELARABY (Egypt) said he would like to thank all delegations that had expressed their sympathy with Egypt on the occasion of the recent earthquake and to convey Egypt's condolences to Colombia on the occasion of the earthquake there.

(Mr. Elaraby, Egypt)

9. The momentous developments that had taken place in the international arena in recent years had been reflected in the character, norms and concepts of international relations and had been accompanied by serious efforts to implement the provisions of the Charter and lay the foundations for a new international order. They also required a comprehensive review of the working methods of the United Nations, a thorough examination of the Organization's ability to meet its Charter obligations and proposals for coping with its increasing responsibilities.

10. The Charter contained general provisions under which the required modifications and reforms could be carried out without encroachment on those of its provisions that were of a constitutional character. Over the years, Egypt had made specific proposals for improving the performance of the United Nations through the modification of the rules of procedure of its bodies. A number of such amendments had been made in the past, the best known being those introduced by General Assembly resolution 377 A (V) of 3 November 1950, the "Uniting for peace" resolution, under which rules 8 (b) and 9 (b) had been added to the rules of procedure of the General Assembly. What was now required was an effort to introduce real change in the working methods of certain organs by rationalizing their rules of procedure. In the same connection, the Security Council should consider giving final form to its provisional rules of procedure, particularly since the obstacles to doing so in the past had largely lost their importance, and such a step would increase its effectiveness and credibility.

11. A concerted effort should be made to ensure that resolutions were honoured, and it might be useful to consider the principle of the accountability of States vis-à-vis the implementation of resolutions. Current practice was for the Secretary-General to report on those States that had informed him that they had given effect to resolutions while, in accordance with the principle enunciated in Article 2, paragraph 5, of the Charter, reports of the Secretary-General should also refer to States that had not implemented resolutions and give the reasons for such non-implementation.

12. His delegation had already expressed its support for the proposals made in the Secretary-General's report entitled "An agenda for peace" for strengthening the role of the Organization in the fields of preventive diplomacy, peacemaking and peace-keeping, subject to adherence to the purposes and principles of the Charter and respect for the national sovereignty and independence of States. The Secretary-General had urged Member States to accept the general jurisdiction of the International Court of Justice by the year 2000, and that proposal was worthy of support. The Secretary-General should be authorized to seek advisory opinions from the Court so as to be able to play a more active role in preventive diplomacy. The report of the Secretary-General fell within the purview of the General Assembly and, out of respect for the principles of transparency and participation in international relations, the Assembly should subject it to searching examination. An open-ended working group should be established to consider the proposals it

(Mr. Elaraby, Egypt)

contained and any other proposals that might be made, and its report should be considered by the General Assembly within a very short period of time at a special session convened for that purpose.

13. With the approaching fiftieth anniversary of the United Nations, it would be appropriate to give serious consideration to the establishment of a preparatory committee to conduct a thorough and objective review of the Charter, not for purposes of its amendment, since there were no real reasons for that, but in the light of the fundamental changes that had taken place in international relations since its adoption. His delegation was not calling for a resolution amending the provisions of the Charter in a general manner but for a truly serious study of the matter given that the item had been included in the agenda of the General Assembly since 1955.

14. In view of the expanding role of the Security Council and the greatly increased membership of the United Nations, calls continued to be made for an increase in the number of members of the Council. In any expansion of the Security Council, account must be taken of regional as well as international forces since, with an end to the problems caused by the East-West rivalry, current indications were that future disputes would be of a predominantly regional character.

15. In the Special Committee's discussion of working paper A/AC.182/L.73 on assistance to third States affected by the application of sanctions, the important concept had emerged of sharing the costs of the collective security system so that its burdens would not fall on a limited number of States. It was essential to establish a mechanism to ensure an appropriate response to requests from affected States for assistance under Article 50 of the Charter. His delegation therefore awaited with interest the revised paper on the matter that would be discussed by the Special Committee at its next session.

16. While the draft declaration on the improvement of cooperation between the United Nations and regional organizations, submitted by the Russian Federation, provided a sound basis for the elaboration of rules governing such cooperation so that regional organizations could play an effective role in the maintenance of regional peace and security, it would be premature to adopt a draft declaration at the current stage and the subject required further study.

17. The draft United Nations rules for the conciliation of disputes between States submitted by Guatemala contained many important ideas that merited further study. However, its highly detailed character deprived it of the flexibility required in addressing such an important means for the settlement of international disputes.

18. Mr. FLEISCHHAUER (Under-Secretary-General, The Legal Counsel) observed that in his report entitled "An agenda for peace" (A/47/277-S/24111, para. 38) the Secretary-General again confirmed his proposal that he should be authorized to request advisory opinions from the International Court of

(Mr. Fleischhauer)

Justice. At its 164th meeting, on 18 February 1992, the Special Committee had requested the Legal Counsel to explain the considerations underlying that proposal. His statement was reproduced in paragraph 31 of the Special Committee's report (A/47/33). During the ensuing discussion, some representatives had requested further clarification on a number of specific questions, which were mentioned in paragraph 32 of the report.

19. The first of those questions concerned the meaning of the phrase "within the scope of their activities" in Article 96 of the Charter, and whether the authorization of the Secretary-General to seek an advisory opinion from the Court would encompass the entire range of his activities or only those activities related to the settlement of disputes between States. The phrase in question was embodied in Article 96, paragraph 2, of the Charter, which empowered the General Assembly to authorize other organs of the United Nations and specialized agencies to request advisory opinions on "legal questions arising within the scope of their activities". In comparison with the wording in paragraph 1 of Article 96 which granted the General Assembly and the Security Council the right to request advisory opinions on "any legal question", the phrase "within the scope of their activities" laid down an overall limit on what might be requested of the Court. The purpose was to exclude questions which did not fall within the scope of activities of the authorized organ. Indeed, all the organs and specialized agencies that had so far been authorized to request advisory opinions had been authorized on a general basis under the terms of Article 96, paragraph 2, i.e., expressly within the scope of their activities.

20. Since the Secretary-General was head of the Secretariat, the scope of his activities was coextensive with that of the Secretariat. It went further, however, and included, according to Article 98 of the Charter, those tasks which were entrusted to the Secretary-General by the General Assembly, the Security Council, the Economic and Social Council or the Trusteeship Council. Those tasks included the exercise of good offices and mediation in disputes between States.

21. Functionally, the authorization of the Secretary-General to seek advisory opinions should encompass the full range of his activities since that would be consistent with the practice of the General Assembly in the previous authorizations. However, the authorization of the Secretary-General would be particularly useful in respect of disputes in which the Secretary-General had been asked to play a role, such as the exercise of his good offices or mediation; the extension of that authorization to the Secretary-General would add to the means of peaceful solution of international crisis situations. It was for the General Assembly to decide what should be the scope of an eventual authorization and whether, in respect to disputes, it should be general or on an ad hoc basis.

22. The next question in paragraph 32 was whether the consent of the parties to a dispute to the request for an advisory opinion extended to the actual

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formulation of the question addressed to the Court and how the advisory role of the Court could relate to the role of the Legal Counsel.

23. Since the objective was to reach a solution acceptable to the parties and since it was important to have their cooperation, the contents of the question posed should therefore not be objectionable to the parties. They would have to agree not only to the request as such, but also to the formulation of the question addressed to the Court.

24. As to the role of the Legal Counsel in that regard, he was directly responsible to the Secretary-General for matters entrusted to him. In previous advisory proceedings, irrespective of which organ had initiated them, the role of the Legal Counsel had been to represent the Secretary-General in making written submissions and oral presentations to the Court. That would also be done in advisory proceedings initiated by the Secretary-General. The Legal Counsel also provided, inter alia, legal advice to the Secretary-General. The advisory role of the International Court of Justice in that regard was, however, of a different character. The advisory opinion of the Court was authoritative by virtue of the high office it held.

25. The next question in paragraph 32 was whether it was appropriate to grant such authorization, which so far had only been granted to international governmental bodies, to an individual.

26. As far as appropriateness was concerned, he would limit himself to reminding the Committee that the authorization was not being sought for just any individual. It was being sought for the individual to whom the community of States, as represented by the Security Council and the General Assembly, had entrusted the position of Secretary-General. In a more legal vein, he wished to add that Article 96, paragraph 2, of the United Nations Charter did not lay down any qualification or restriction on the nature of the organ.

27. In that context, he also wished to refer to an argument which contended that a discrepancy existed between Article 65 of the Statute of the Court and Article 96 of the Charter. It was argued that while Article 96 referred to "organs", pursuant to Article 65 of the English text the Court could entertain requests from "bodies" only, which would include collegiate organs, but exclude the Secretary-General, who was not a "body" but an individual. The view of the Legal Counsel was that Article 96, paragraph 2, referred to two categories of entities: "organs of the United Nations and specialized agencies". Since the specialized agencies were not organs of the United Nations, Article 65 used the term "bodies" to embrace both categories. That could be seen clearly from the equally authentic French text of those articles. Article 96, paragraph 2, referred to "tous autres organes de l'Organisation et institutions spécialisées". The French text of Article 65 thus used the words: "organe ou institution". Article 103 of the Rules of Court was also consistent in that regard and used "organe ou

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institution" to embrace both categories. Consequently, he did not think that Article 65 of the Statute of the Court was in any way inconsistent with Article 96, paragraph 2, of the Charter.

28. The next question in paragraph 32 was whether, in case the dispute had not been resolved despite a request by the Secretary-General for an advisory opinion, and the dispute had been referred to the General Assembly or the Security Council, the latter organs would be bound by the advisory opinion.

29. On that question, generally speaking, the essence of the Court's advisory opinions was that they were advisory and had no binding effect. The Court's advisory function was therefore different from its function in contentious cases. An advisory opinion requested by the Secretary-General would be given to him for his own use. It would have no binding effect on the parties concerned, the General Assembly or the Security Council.

30. Since the opinion was only advisory, the requesting organ remained free to give effect to the opinion by any means open to it, or not to do so. An advisory opinion nevertheless enjoyed the authority and prestige of the Court. But unless and until a decision had been taken by the General Assembly or by the Security Council to endorse an advisory opinion, the opinion remained advisory and not binding on any body.

31. Lastly, paragraph 32 stated that further clarification was needed as to whether the authorization would be granted on an ad hoc or permanent basis.

32. It would be for the General Assembly to decide whether the authorization would be general or on an ad hoc basis. The General Assembly might, at first, only provide for the possibility of ad hoc authorization. Although that would not meet the ultimate goal of the Secretary-General's suggestion, it would nevertheless be a step in the right direction.

33. If only an ad hoc authorization was provided for in a resolution by the General Assembly, it would remain to be seen what use the General Assembly would make of such a device.

34. Ms. BOUM (Cameroon) said the unprecedentedly large number of States which had participated in the latest session of the Special Committee as observers had reflected the conviction that that Committee was the ideal forum for considering all questions relating to the strengthening of the role of the Organization in the peaceful settlement of disputes and the maintenance of international peace and security. In a period of transition to a new world order, the Special Committee must work on new instruments which would make the United Nations more effective and enable it to adapt to the new realities.

35. Everyone agreed on the need to increase the effectiveness of the United Nations, but views diverged widely on the best way to do it. Her delegation

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believed that the new world order could not be envisaged without a review of the Charter so as to eliminate provisions that had become obsolete and correct its imperfections. In that respect, as noted by the Secretary-General in "An agenda for peace", the new spirit of commonality must be propelled by the will to take the hard decisions demanded by the current time of opportunity (A/47/277-S/24111, para. 6).

36. With regard to the draft declaration on the improvement of cooperation between the United Nations and regional organizations, some of the suggestions, particularly in paragraph 9, had already evoked a favourable reaction in the subregion of Central Africa. The 11 States of that subregion, with United Nations assistance, had recently established a permanent advisory committee on security questions; measures would be taken to establish a training centre for peace-keeping personnel, conclude a non-aggression pact and operate an inter-State command centre for crisis management. It was regrettable that the draft declaration did not refer to the need for cooperation in the economic and social fields, in line with the comprehensive view of security in the declaration adopted by the participants at the Summit Meeting of the Security Council and "An agenda for peace".

37. With regard to the working paper entitled "New issues for consideration in the Special Committee", she noted that "An agenda for peace" contained ideas already developed by the Special Committee and new ideas that the Special Committee could usefully consider, particularly with regard to the non-military aspects of security; the Special Committee should consider ways and means of revitalizing the United Nations so that it would deal with those aspects in an effective manner.

38. The working paper on assistance to third States affected by the application of sanctions confirmed the need for a review of the Charter, and in particular the strengthening and rationalization of the application of Articles 49 and 50. The Special Committee should be competent to consider that question. The ideas contained in the working paper entitled "Strengthening of the role of the United Nations in the maintenance of international peace and security" should be considered in greater depth by the Special Committee, and it should give priority to the question of expansion of the Security Council on the basis of equitable geographical distribution.

39. Mrs. KUPCHINA (Belarus) said there was no doubt that all the work of the Special Committee was influenced by the far-reaching changes that had occurred in the international political arena, and in particular by the Summit Meeting of the Security Council. "An agenda for peace" outlined four main areas of activity which were critical for future progress in the Special Committee's work. The Special Committee had an unprecedented opportunity to intensify its efforts to fulfil its mandate in the interests of the United Nations, the international community and individual States.

40. The United Nations had demonstrated that it could be a real and universal instrument for solving global problems. The end of the cold war enabled it to

(Mrs. Kupchina, Belarus)

concentrate on solving the practical problems of realizing the ideals embodied in the Charter. At the same time, the instruments used by the international community needed to be substantially modernized; it was particularly important to review the Charter to bring it in line with the new realities, and bring all its basic provisions into operation; the Special Committee needed to find ways of adapting the United Nations system and also enhancing the effectiveness of the Organization by improving coordination between its bodies.

41. Regional organizations, as a vital element of the collective security system, were capable of playing a significant role in halting and also in preventing regional conflicts. Regional stability was an inseparable part of world stability, and further work on the draft declaration on cooperation between the United Nations and regional organizations should be a priority task of the Special Committee, so as to give real content to Chapter VIII of the Charter. However, many paragraphs of the draft declaration were formulated too rigidly; their provisions were too imperative in nature and did not always accord with the legal nature of the draft, or with the situation of regional organizations which took up issues relating to the maintenance of international peace and security on an optional basis. Her delegation shared the view that the question of the specific form of the document shoud be considered at a later stage.

42. The time had clearly come to take practical steps to implement the Secretary-General's recommendations on measures to protect States from special economic difficulties associated with the application of sanctions. Her delegation welcomed the draft rules for the conciliation of disputes between States, which were particularly relevant at a time when violent conflicts continued to rage in some regions and innocent people, including children and women, were victims. Her country had frequently expressed its support for strengthening the work of the United Nations in conducting peace-keeping operations in general and, in particular, it was prepared to participate actively in seeking peaceful ways of resolving the Nagorno-Karabakh conflict and had agreed to host an international conference on the problem at Minsk.

43. The distribution of the Handbook on the Peaceful Settlement of Disputes between States should be accelerated, and the mechanisms for the implementation of the Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security should be brought into effect. The Special Committee should pay greater attention to ways of influencing States which had initiated military action and were not implementing relevant Security Council decisions, expanding the peacemaking mandate of the Secretary-General, carrying out the preventive functions of the United Nations and conducting international campaigns against violence and armed conflict.

44. In the context of the radical changes in the world, above all the transition in East-West relations from bloc confrontation to partnership and

(Mrs. Kupchina, Belarus)

cooperation on the basis of the principles of democracy, respect for human rights and observance of the norms of international law, the necessary conditions were being created for a real strengthening of the role of the United Nations in the maintenance of international peace and security. Her country favoured a broad interpretation of the concept of international security: the world community was encountering new threats to security including environmental problems, terrorism, the international drug trade and crises in the economic, social and humanitarian fields.

45. In a new era of international cooperation, her delegation was convinced that the Charter would play a positive role as a pivotal document of the new world order. The question of the Charter should be considered in very close conjunction with the problem of strengthening the role of the Organization. The Charter in itself could not guarantee a strengthening of the new role of the United Nations: only a global strategy of international coordination based on the political will of States could withstand the threats to international security. Her country, as a founding member of the United Nations, remained committed to the Charter, which had proved its viability and had not exhausted its potential to enhance the effectiveness and strengthen the role of the United Nations.

46. Mr. VIO (Chile) said that the great changes that had occurred on the international scene offered an opportunity to build a more just and peaceful world that would abide by the norms of international law and support the United Nations.

47. In connection with working paper A/AC.182/1992/CRP.2 entitled "Strengthening of the role of the United Nations in the maintenance of international peace and security" (A/47/33, para. 123), his delegation believed that it was essential to secure a balance between the various United Nations bodies in order to be able to maintain world peace and security. The Secretary-General, in times of crisis, should be able to put forward new solutions so as to enable States to progress towards peace and the United Nations to respond more effectively to the needs of the new political and social situation. He should be authorized to seek advisory opinions from the International Court of Justice, which, in the case of conflicts, would require the prior authorization of the parties, as a means of enabling him to better meet the requirement of contributing to the solution of international crises, without fundamentally changing the structure of the United Nations.

48. On the question of the settlement of disputes between States, international law imposed the obligation to resort to peaceful means, but did not impose specific methods of settlement; the choice was left to the parties to a dispute. A belief in the peaceful settlement of all disputes would strengthen the climate of confidence within and among regions of the world. In that context his delegation welcomed the draft rules for the conciliation of disputes between States.

(Mr. Vio, Chile)

49. His delegation attached great importance to cooperation between the United Nations and regional organizations and believed that the draft declaration on that subject was a valuable contribution to the work of the United Nations in that respect; the Special Committee should take into account the experience of regional bodies, such as the Organization of American States, in conflict prevention and limitation. A balance must be achieved between the principle that peace was one and indivisible and therefore concerned the community of States as a whole, and the principle of the autonomy of regional organizations.

50. Chile continued to attach great importance to the question of assistance to third States affected by the application of sanctions and was encouraged by the inclusion of the subject in "An agenda for peace".

51. Mrs. Flores (Uruguay), Vice-Chairman, took the Chair.

52. Mr. HYON (Democratic People's Republic of Korea) said that, while the end of the cold war had ushered in a new era of rapprochement and cooperation in international relations, endeavours to build a free and peaceful world were being undermined by the aspirations of some countries to world domination. The international community expected the United Nations to play a pivotal role in safeguarding world peace and security, but in order to do so the Organization must be restructured and democratized in the interests of ensuring the independence, sovereignty and equal status of all its Member States. It was also an essential premiss of the democratization of the United Nations that the overall authority of the General Assembly would not be undermined, and that steps would be taken to ensure that the Security Council was accountable to the General Assembly. With regard to the composition of the Security Council, his delegation considered that a country that still failed to accept any responsibility for aggression and war crimes committed during the Second World War was not qualified to become a permanent member of the Council. Japan must sincerely apologize for the crimes it had perpetrated in the past and make full compensation for the sufferings it had inflicted on other countries before it could aspire to become a permanent member of the Security Council. His delegation believed that the United Nations should live up to the expectations of its Member States by eradicating all the unjust and contradictory remnants of the cold war.

53. Mr. SALEEM (India) expressed appreciation for the statement made by the Legal Counsel and proposed that it should be circulated to all the members of the Committee.

54. Document A/AC.182/L.72 (A/47/33, para. 39) proposed a universal model under which regional organizations would play an effective role in preventing disputes and maintaining peace and security in the region, with broad scope for fact-finding and enforcement action. The document appeared to be based on the premise that States should seek to establish regional organizations in accordance with their obligations under the Charter of the United Nations. The legal position concerning regional organizations was contained in

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Chapter VIII of the Charter and particularly in Article 52, paragraph 1. While the Charter did not preclude the existence of regional arrangements or agencies for dealing with matters relating to the maintenance of international peace and security, it did not impose on States any obligation to establish such organizations. Once regional organizations had been established, however, they must conform to the norms set out in the Charter; in particular, any powers granted to regional agencies must in no way impair the competence of the Security Council under Articles 34 and 35 of the Charter, and no enforcement action could be taken by such agencies without the authorization of the Security Council. The role of regional organizations in the maintenance of international peace and security was thus clearly limited; accordingly, it was not legally possible to envisage their being more effective in the area of peace and security than they were entitled to be under the Charter. Since the functions, powers and structure of a regional organization would depend entirely on the political will of the States which established it, it was unrealistic to envisage a universal model for all regions. His delegation therefore recommended that a cautious approach should be taken in the matter.

55. As a country which had been directly affected by the Gulf crisis, and also to some degree by the current Yugoslav crisis, India had an immediate interest in working paper A/AC.182/L.73 (A/47/33, para. 109), of which it was a sponsor. His delegation called for the establishment of a mechanism for the implementation of Article 50 of the Charter so that timely and effective assistance could be provided to States affected by sanctions imposed by the Security Council. At a suitable stage, a fund could be set up through mandatory contributions to assist such States.

56. Working paper A/AC.182/1992/CRP.2 (A/47/33, para. 123) contained many useful ideas, including the question of changing the composition of various United Nations bodies, such as the Security Council, and the democratization of the process through which decisions were adopted by United Nations bodies. His delegation urged the Special Committee to give careful consideration to the working paper.

57. As to working paper A/AC.182/L.65 and Corr.1 (A/47/33, paras. 95 to 108), most of the proposals which it contained had been incorporated in document A/AC.182/L.72 and the Handbook on the Peaceful Settlement of Disputes adopted by the General Assembly in 1991.

58. Turning to document A/45/742 (A/47/33, para. 132), he said that while conciliation was one of the methods of pacific settlement of disputes referred to in Article 33 of the Charter, State practice to date had not clearly reflected an abiding interest in that method, such that the United Nations should consider adopting detailed rules for the conciliation of disputes. Clearly, the parties to a dispute could adopt their own rules of procedure if they could agree on a method. Furthermore, conciliation, like the good offices of the Secretary-General and mediation, must be voluntary and must be

(Mr. Saleem, India)

carried out with the prior consent of the parties to a dispute. Lastly, any rules for conciliation must be flexible; otherwise, the method would lose its attractiveness for the parties. Accordingly, his delegation proposed, as an alternative, a set of broad guidelines should be developed, rather than rigid rules.

59. Mr. FSADNI (Malta) said his delegation wished to reiterate its concern regarding the potential threat that an increasingly active Security Council might pose to the relationship between that body and the General Assembly. At the same time, positive developments within the Security Council would require the revitalization of the General Assembly itself. That concern appeared to be shared by a number of other delegations.

60. The Special Committee's consideration of the proposal by the Secretary-General that he should be authorized to request advisory opinions from the International Court of Justice had confirmed that the suggestion, although not without support, was not uncontroversial. His delegation, however, could go along with the proposal.

61. The Maltese Government was proud of its commitment to the regional organizations of which it was a member. Its experience in those organizations reinforced its belief in the need for cooperation between the United Nations and regional organizations, and in that connection the Maltese delegation had put forward a proposal at the 1992 Summit of the Conference on Security and Cooperation in Europe to designate the Conference as a regional organization under the terms of Chapter VIII of the Charter of the United Nations. That designation and its implications would be assessed by his delegation in its statement under the appropriate agenda item. In that connection, his delegation welcomed the working paper on cooperation between the United Nations and regional organizations submitted by the Russian Federation. In another context, it also looked forward with interest to the submission, at the Special Committee's session, of the revised versions of the working paper on new issues for consideration by that Committee and of the draft rules for the conciliation of disputes between States.

62. His delegation had been pleased to note the Special Committee's positive reception of working paper A/AC.182/L.73/Rev.1, submitted by a group of delegations, including his own, regarding assistance to third States affected by the application of sanctions under Chapter VII of the Charter. Paragraph 115 of the Committee's report rightly noted the broad support given to many of the basic concepts of that paper. His Government had never wavered in the fulfilment of its obligation under Article 25 of the Charter to accept and carry out the decisions of the Security Council in respect of sanctions, an obligation which on several occasions had led to considerable economic hardships for his country. It was probable that the end of the cold war would continue to extend the activities of the Security Council. Such activities would inevitably cause economic problems to innocent third States, and his delegation therefore joined with others in urging the need for appropriate

(Mr. Fsadni, Malta)

arrangements to ensure provision for assistance in such cases. Articles 49 and 50 of the Charter were based on the concept of equitable sharing of the economic burdens arising from the application of economic sanctions. The Special Committee should now focus its attention on the procedures for verifying the economic losses incurred by third States, and the problematic issue of the funding of compensation.

63. The question of the composition of the Special Committee had been raised in paragraph 16 of its report. In view of that Committee's practice of accepting all requests for observer status from Member States, and of permitting their participation on a virtually equal basis, his delegation could see no reason for the continued restrictions on membership of the Special Committee.

64. Mr. NEGA (Ethiopia) said it was to be hoped that the current unprecedented increase in the membership of the United Nations would be reflected in a greater democratization of the Organization. His delegation believed that the Special Committee had a significant role to play in the revitalization of the Organization, and to that end should be adapted to existing circumstances by, among other things, the expansion of its membership and the establishment of balance in the discharge of its mandate.

65. His delegation welcomed the publication of the Handbook on the Peaceful Settlement of Disputes between States and working paper A/AC.182/L.72, submitted by the Russian Federation, containing the draft declaration on cooperation between the United Nations and regional organizations (A/47/33, para. 39), which would serve as a sound basis for the further elaboration and encouragement of regional arrangements and agencies in international affairs in general and in the maintenance of peace and security in particular. The experience gained in earlier years had revealed the enormous potential of such mechanisms and had prompted greater interest in their application.

66. The reference in the fourth preambular paragraph of the draft declaration to flexible coordination and effective action by regional and subregional organizations reflected the spirit of Article 52 of the Charter; as noted in the Secretary-General's report "An Agenda for Peace" (A/47/277-S/24111, para. 61), the Charter deliberately provided no precise definition of regional arrangements and agencies, thus allowing flexibility in their establishment and use. Experience had shown that regional arrangements could be of a permanent nature, or could be established on an ad hoc basis in order to deal with specific local disputes and conflicts. However, the draft declaration sought to limit the scope of application of regional entities and his delegation therefore considered that it should be studied further, with a view to producing a final text that would promote the role of regional arrangements and agencies.

67. With regard to the working paper on assistance to third States affected by sanctions under Chapter VII of the Charter, he said that Ethiopia shared

(Mr. Nega, Ethiopia)

the concern of those States. The working paper did not make concrete proposals, and a timely solution should be found which would address not only existing difficulties but also those which might arise in the future as a result of further actions by the Security Council in the exercise of its mandate under Chapter VII.

68. Mr. YAMAMOTO (Japan), speaking in exercise of the right of reply, said that, with reference to the statement made by the representative of the Democratic People's Republic of Korea, his Government had frequently expressed its regret and deep concern over Japan's past conduct towards the other countries of the region and its desire to improve relations with those countries, including by means of financial compensation. Japan would continue to promote regional prosperity. Talks were currently under way with a view to the normalization of relations between Japan and the Democratic People's Republic of Korea, and the issues to which the representative of that country had referred would be settled through those discussions.

69. Mr. HYON (Democratic People's Republic of Korea), speaking in exercise of the right of reply, said that while the Japanese Government had indeed apologized for the unspeakable crimes which Japan had committed against other Asian peoples, its words had not been reflected in deeds. During the negotiations to which the Japanese representative had referred, his Government had provided data concerning the suffering and the losses inflicted on its country by Japan, but the Japanese Government had not responded. If Japan wished to play a credible political role in the contemporary world, its statements must be reflected in reality. Only then could the peoples of Asia and the Pacific believe that Japan had truly overcome its past.

The meeting rose at 5.15 p.m.

UNITED NATIONS

General Assembly

FORTY-SEVENTH SESSION

Official Records

SIXTH COMMITTEE
19th meeting
held on
Friday, 23 October 1992
at 10 a.m.
New York

SUMMARY RECORD OF THE 19th MEETING

Chairman: Mr. ZARIF (Islamic Republic of Iran)

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Distr. GENERAL
A/C.6/47/SR.19
9 November 1992
ENGLISH
ORIGINAL: SPANISH

The meeting was called to order at 10.20 a.m.

1. The CHAIRMAN welcomed Sir Robert Jennings, President of the International Court of Justice, Mr. Ago and Mr. Schwebel, Judges, and Mr. Valencia-Ospina, Registrar of the Court.

2. Sir Robert JENNINGS (President of the International Court of Justice) thanked the Chairman for his words of welcome and noted the symbolic significance of his annual attendance of the meetings of the Sixth Committee. The work of both the International Court of Justice and the Sixth Committee concerned international law, and he looked forward to further close cooperation in that connection.

AGENDA ITEM 125: OBSERVER STATUS OF NATIONAL LIBERATION MOVEMENTS RECOGNIZED BY THE ORGANIZATION OF AFRICAN UNITY AND/OR BY THE LEAGUE OF ARAB STATES (A/C.6/47/L.5)

3. Ms. VALDES (Cuba) introduced draft resolution A/C.6/47/L.5 on behalf of the original sponsors as well as of Egypt, the Libyan Arab Jamahiriya and Senegal. Like the many similar resolutions adopted by the Committee every two years in the past, it emphasized the need to provide national liberation movements recognized by the Organization of African Unity or the League of Arab States with the facilities, privileges and immunities due to them in their capacity as observers. Reiterating her support for the draft resolution, she trusted that all peace-loving States would endorse it.

4. Ms. BOUM (Cameroon) said that her country wished to become a sponsor of the draft resolution.

5. Mr. WOOD (United Kingdom of Great Britain and Northern Ireland), speaking on behalf of the twelve States members of the European Community, said that the Twelve would not vote in favour of the draft resolution. All would either vote against it or abstain, for purely legal reasons.

6. None of the Twelve had signed, ratified or acceded to the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character. The Convention had not secured general agreement at the Conference in 1975 and, 17 years after its adoption, only 25 States had ratified or acceded to it. The Convention had thus not yet entered into force.

7. In addition, the principal States which hosted international organizations of a universal character had maintained that they could not agree with a number of the Convention's provisions. In the circumstances, the European Community and its member States did not think it appropriate that a General Assembly resolution should seek to enhance the status of the Convention. Finally, the yearly decline in the number of speakers on the item under consideration indicated a clear lack of interest in the matter. In the opinion of his delegation, the item should not remain on the agenda of the General Assembly.

8. Mr. GONDRA (Argentina) said that his country supported the participation of national liberation movements as observers in organizations and at international conferences. Nevertheless, it was obvious that interest in the item had diminished and that the number of speakers on the issue had gradually decreased, to the extent that there had been not a single speaker during the current session. His delegation would therefore abstain from voting on the draft resolution.

9. Ms. WILLSON (United States of America) said that the decision by many States not to endorse the Convention when it was adopted demonstrated the pointlessness of continuing to dwell on the draft resolution. The only result was to undermine the authority of resolutions and conventions which had achieved broad acceptance.

10. Her delegation did not agree with paragraph 1 of the draft resolution because it did not accept the contents of the Convention mentioned therein, which neither reflected established law nor even was valid as lege ferenda. There was no legal basis for paragraph 2, and the request contained in paragraph 3 entailed expenditure and a waste of time and energy, encouraging continued emphasis on a draft resolution in which no one showed any interest. Her delegation would therefore vote against the draft resolution.

11. Ms. GOLAN (Israel) said that her delegation opposed the draft resolution, as it had the previous year, for both factual and legal reasons.

12. Under article 89 of the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character, the Convention would enter into force following the deposit of the thirty-fifth instrument of ratification or accession. However, only 25 such instruments had so far been received and there had been no additional signatures since the introduction of the last draft resolution. To call for States to apply a Convention which had not yet entered into force therefore appeared to her delegation to be somewhat premature and of questionable practical value.

13. In the view of her country, the Sixth Committee should not recommend that the General Assembly adopt a resolution whereby States that were not parties to a convention, which in its turn was not in force, were requested to apply its provisions, nor ask the Secretary-General to follow up on the implementation of what was an unimplementable resolution. It was particularly concerned by the seventh preambular paragraph of the draft resolution, which was somewhat ironic and lacked any foundation in law, fact or theory. Her delegation would therefore vote against the draft resolution.

14. A recorded vote was taken on draft resolution A/C.6/47/L.5.

In favour: Algeria, Antigua and Barbuda, Armenia, Bahrain, Barbados, Benin, Botswana, Brazil, Brunei Darussalam, Cameroon, Chile, China, Colombia, Côte d'Ivoire, Cuba, Cyprus, Djibouti, Ecuador, Egypt, Ethiopia, Gabon, Guyana, India, Indonesia, Iran (Islamic Republic of), Iraq, Jordan, Kuwait, Lebanon, Malawi, Malaysia, Maldives, Mali, Mexico, Morocco, Mozambique, Myanmar, Namibia, Niger, Nigeria, Oman, Pakistan, Peru, Rwanda, Saudi Arabia, Senegal, Singapore, Sri Lanka, Suriname, Swaziland, Syrian Arab Republic, Thailand, Trinidad and Tobago, Tunisia, United Arab Emirates, United Republic of Tanzania, Uruguay, Vanuatu, Venezuela, Viet Nam, Zimbabwe.

Against: Belgium, France, Germany, Israel, Italy, Luxembourg, Netherlands, United Kingdom of Great Britain and Northern Ireland, United States of America.

Abstaining: Argentina, Australia, Austria, Belarus, Bulgaria, Canada, Costa Rica, Czechoslovakia, Denmark, Finland, Greece, Hungary, Japan, Liechtenstein, Malta, Marshall Islands, New Zealand, Norway, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Saint Kitts and Nevis, Spain, Sweden, Turkey, Ukraine.

15. Draft resolution A/C.6/47/L.5 was adopted by 61 votes to 9, with 28 abstentions.

16. Mr. CHOI (Republic of Korea) said that his country had abstained in the vote for purely juridical reasons. Only 25 Member States had ratified the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character adopted in 1975. Moreover, that instrument raised some legal questions that prevented its ratification by a number of States. Nevertheless, his abstention did not constitute a precedent of any kind concerning Korea's position with regard to national liberation movements.

17. Mr. YOUSIF (Sudan), Mr. OULD MOHAMED LEMINE (Mauritania), Mr. MANGUSHO (Uganda), Mr. ALKHAZMI (Libyan Arab Jamahiriya), Mr. AL-DALAY (Yemen) and Mr. ZIAUDDIN (Bangladesh) said that, had they been present during the vote on draft resolution A/C.6/47/L.5, they would have voted in favour.

18. Mr. BIGGAR (Ireland) noted that had it been present his delegation would have abstained.

AGENDA ITEM 136: PROTECTION OF THE ENVIRONMENT IN TIMES OF ARMED CONFLICT (A/C.6/47/L.2/Rev.1)

19. The CHAIRMAN announced that Armenia, Austria, Belgium, Bulgaria, Chile and the Philippines had joined the sponsors of draft resolution A/C.6/47/L.2/Rev.1.

20. Mr. ORDZHONIKIDZE (Russian Federation) said that, as the Secretariat had been informed, his delegation wished to join the sponsors of the draft resolution.

21. Mr. KHEIR (Jordan) introduced the draft resolution (A/C.6/47/L.2/Rev.1) and said that it represented a serious effort to address to the greatest extent possible the concerns expressed by various delegations and groups. Its text was delicate and carefully balanced and had been reached after continuous and extensive debate and a great deal of compromise. For that reason, he hoped that it would be adopted by consensus.

22. Mr. STRAUSS (Canada) said that his delegation considered the subject of the protection of the environment in times of armed conflict very important and therefore felt that it should be included in the agenda of the General Assembly at its next session as a separate item.

23. Mr. GONDRA (Argentina) said that in his delegation's view the word "destruction" in the fifth preambular paragraph covered total or partial destruction and included damage to the environment.

24. Mr. DELON (France) said that the clear distinction made in the second preambular paragraph between the provisions of international law applicable to the protection of the environment in times of armed conflict and, in particular, both the rules of universal applicability laid down in The Hague Convention of 1907 and the Geneva Convention of 1949, on the one hand, and the applicable rules of the Protocol Additional to the Geneva Conventions of 1949 and the Convention of 1977 tended to reinforce the notion that the above-mentioned Protocol only bound the States parties which had adhered to it. On that understanding, France joined the consensus expressed in draft resolution A/C.6/47/L.2/Rev.1.

25. Mr. CHATURVEDI (India) said that the question of the protection of the environment in times of armed conflict was very important and that his Government would be glad to see the largest possible number of countries ratify the relevant instruments. Although his delegation would have preferred that the General Assembly examine the question later in order to give the International Committee of the Red Cross and other bodies an opportunity to study it more carefully, it would be able to support the text of the draft resolution, which represented a well-balanced compromise solution.

26. Mrs. KOUPCHINA (Belarus) proposed that, in view of the item's importance, it should be included in the agenda of the General Assembly's next session as a separate item. She welcomed the idea that the International Committee of the Red Cross should submit to the General Assembly a report on its activities which would include interpretations of international law on the question because, as other delegations had pointed out, the absence of such interpretations might give rise to misunderstandings.

27. Mr. BABA (Malaysia) said that in view of the subject's importance he agreed that in the future the item should be considered separately.

28. The CHAIRMAN said that if there were no objections he would take it that the Committee wished to approve draft resolution A/C.6/47/L.2/Rev.1 without a vote.

29. Draft resolution A/C.6/47/L.2/Rev.1 was approved.

AGENDA ITEM 127: CONSIDERATION OF EFFECTIVE MEASURES TO ENHANCE THE PROTECTION, SECURITY AND SAFETY OF DIPLOMATIC AND CONSULAR MISSIONS AND REPRESENTATIVES (A/47/325 and Add.1 and 2; A/C.6/47/L.6)

30. Mr. KOURULA (Finland) introduced draft resolution A/C.6/47/L.6 and announced that Japan had joined the list of sponsors.

31. As the report of the Secretary-General (A/47/325 and Add.1 and 2) made clear, violations of the safety and security of diplomatic and consular missions and representatives continued to be a problem for the international community and such violations were prejudicial to international relations. The statements made in the Committee showed that Member States were determined to condemn and punish such practices.

32. The draft resolution before the Committee was based on the resolutions on the subject adopted by the General Assembly over the years. Events had led to changes in the usual drafting of the resolution and on the present occasion it was proposed that it should be approved in its traditional form so that it reflected the continuing concern of Member States regarding the violations being committed.

33. In view of the importance of the question for all Governments, the sponsors of the draft resolution hoped that the Committee would approve it without a vote.

34. Mr. NEGA (Ethiopia) said that, as the host to more than 80 diplomatic and consular missions, as well as a State adhering to the main legal instruments for the protection and security of such missions and their representatives, Ethiopia fully supported the objectives of the draft resolution. His country had always maintained that any violation of the security of missions or persons belonging to them was a violation of international law and should not be tolerated.

(Mr. Nega, Ethiopia)

35. After referring briefly to the events that had taken place in the Embassy of Israel in Addis Ababa on 17 September 1991, which were mentioned in the Secretary-General report (A/47/325 and Add.1 and 2) and in the statement made by the representative of Israel in the Committee, he said it must be remembered that the incident had taken place as 17 years of dictatorial government and 7 years of civil war were coming to an end in his country. It was unfortunate that such an event had taken place, in spite of the measures taken by the transitional government to ensure the protection and security of the diplomatic and consular missions and their representatives. Although there had been no casualties or damage, his Government was anxious to strengthen its security measures and continued to act in close consultation with the authorities of the Israeli Embassy, which had expressed satisfaction with the way the situation had been handled. He renewed his country's commitment to the protection and security of diplomatic and consular missions and their representatives.

36. The CHAIRMAN said that, if there were no objections, he would take it that the Committee wished to approve draft resolution A/C.6/47/L.6 without a vote.

37. Draft resolution A/C.6/47/L.6 was approved.

The meeting rose at 11.10 a.m.

UNITED NATIONS

General Assembly

FORTY-SEVENTH SESSION

Official Records

SIXTH COMMITTEE
20th meeting
held on
Monday, 26 October 1992
at 10 a.m.
New York

SUMMARY RECORD OF THE 20th MEETING

Chairman: Mr. ZARIF (Islamic Republic of Iran)

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Distr. GENERAL
A/C.6/47/SR.20
16 November 1992
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The meeting was called to order at 10.15 a.m.

AGENDA ITEM 129: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-FOURTH SESSION (A/47/10)

1. The CHAIRMAN expressed the Committee's appreciation for its privileged relationship with the International Law Commission, whose exceptional contribution to the development and codification of international law was universally recognized by Governments and scholars.

2. Mr. TOMUSCHAT (Chairman of the International Law Commission), introducing the report of the Commission on the work of its forty-fourth session (A/47/10), said that peace and security had no surer foundation than the rule of law and that the peaceful settlement of disputes was inconceivable without a system of just and equitable legal norms regulating inter-State relations. By promoting international law, the Sixth Committee and the Commission made an effective contribution to the realization of the objectives of the United Nations. The importance of continuing and even intensifying the fruitful dialogue the Commission had maintained over the years with its parent body was thus very much on the minds of the members of the Commission.

3. Although the results of the latest session might appear less than spectacular, the Commission had in fact achieved a lot in the form of groundwork.

4. In accordance with its usual practice of not holding a substantive debate on draft articles adopted in first reading until the comments and observations of Governments thereon were available, the Commission, at its latest session, had not considered the item "The law of the non-navigational uses of international watercourses" nor the draft articles under the item "Draft Code of Crimes against the Peace and Security of Mankind". He emphasized that it was important for the Commission to have the views of Governments on the draft articles as soon as possible.

5. With respect to the second topic referred to, the Commission had, in accordance with the invitation contained in paragraph 3 of General Assembly resolution 46/54, continued its consideration and analysis of the issues raised in its 1990 report concerning the question of an international criminal jurisdiction.

6. The Commission had decided not to pursue further during the present term of office of its members the consideration of the second part of the topic "Relations between States and international organizations", unless the General Assembly decided otherwise. Inasmuch as States had been slow to ratify and accede to the 1975 Convention on the Representation of States in their Relations with International Organizations of a Universal Character, doubts had arisen as to the advisability of continuing work on the second part of the topic, dealing with the status, privileges and immunities of international

organizations and their staff, a matter that seemed to a large extent to be covered by existing agreements.

7. Although the Commission had considered relatively few topics in 1992, all were singularly important and complex. State responsibility had, of course, always been recognized as central to contemporary international law, and some of its aspects, touching on the interpretation of the Charter and on the functioning of the Organization, had received much attention in the context of recent activities of the Security Council. The topic "International liability for injurious consequences arising out of acts not prohibited by international law" was also closely connected with pressing needs of the international community.

8. The protection of the environment, which was one of the concerns underlying the Commission's work in that area, was undeniably of acute relevance at a time when the entire world was launching an offensive against environmental degradation. As for the question of the establishment of an international criminal jurisdiction, it, too, had acquired growing topicality in the past few years, as evidenced not only by the initiative taken in 1989 by the Caribbean countries in relation to illicit trafficking in narcotic drugs, but also by recent developments in the Security Council and the International Court of Justice.

9. Chapter II of the report (A/47/10) should be read jointly with the annex, which reflected the debate and conclusions of the working group established early in the session by the Commission. In complying with the request made by the General Assembly in paragraph 3 of resolution 46/54, that it should "consider further and analyse the issues raised in its report on the work of its forty-second session concerning the question of an international criminal jurisdiction, including proposals for the establishment of an international criminal court or other international criminal trial mechanism in order to enable the General Assembly to provide guidance on the matter", the Commission had used as a point of departure the tenth report of the Special Rapporteur, Mr. Doudou Thiam, on the Draft Code of Crimes against the Peace and Security of Mankind, which had been thoroughly discussed in the plenary Commission.

10. On the feasibility or desirability of establishing an international criminal jurisdiction, many members had felt that the lack of an international organ charged with the prosecution and trial of crimes of an international character affecting the international community as a whole constituted a gap to be filled in present-day international relations. In their view, recent events on the international scene had clearly shown that the existence of such an organ could have provided a suitable way out of situations that could create international friction. The need for an objective and uniform implementation of the draft Code of Crimes against the Peace and Security of Mankind, as well as the recent changes in the international situation, were additional arguments in favour of the establishment of such a jurisdiction. Some other members of the Commission, although not denying the advantages that

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some kind of international criminal jurisdiction might have in certain international situations and with regard to certain international crimes, had emphasized the great political and technical complexity of the issue and the need for flexible approaches. Some among them had felt that international trial mechanisms other than a court might be more realistic in the present-day international situation. Still other members doubted the feasibility of establishing an international criminal jurisdiction, which involved the surrender of sovereignty by States, raised constitutional difficulties under the internal law of some States, and entailed the risk of undermining the validity of the well-established principle aut dedere aut judicare.

11. With respect to the structure of a possible international criminal court, the prevailing view in the Commission had been that the most realistic approach was a flexible one involving the creation, not of an institution, but rather of a permanent mechanism to which resort could be had immediately and without delay when needed. The court would be an ad hoc body, not in the sense of an organ created ex post facto, but rather in the sense of a pre-existing mechanism to be set in motion when the need arose, and its composition would be determined in each specific case through objective criteria that would ensure the impartiality of the judges and exclude any attempt at manipulation.

12. In connection with the court's jurisdiction, the discussion focused on the following questions: whether jurisdiction should be binding or optional; whether it should be exclusive, concurrent or of a review character; whether it should be linked to the Code or not; who should be entitled to bring a complaint before the court; and, finally, which State or States would have to give consent for the court to have jurisdiction in respect of an individual charged with a crime.

13. With respect to the first issue, most members had favoured a flexible regime whereby ratification of, or accession to, the court's statute would not ipso facto imply acceptance of the court's jurisdiction with regard to any crime. Rather, States would be left free to specify, either at the time of signature of the statute of the court or later on, which of the crimes covered by the Code or other international conventions they would recognize as crimes falling under the jurisdiction of the court.

14. On whether the court's jurisdiction should be exclusive, concurrent with that of national tribunals or of a review character, several members had opted for a system of concurrent jurisdiction. Others had felt that the proposed court could have exclusive jurisdiction on certain international crimes and concurrent jurisdiction on others. There had, however, been no agreement with regard to the identification of the two categories of crimes and doubts had been expressed as to the advisability of providing for a dual system of jurisdiction. The possibility of endowing the court with a jurisdiction of a review character had generally been considered unrealistic.

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15. With regard to the possible link between the court's jurisdiction and the future Code of Crimes against the Peace and Security of Mankind, several members had stressed that the effectiveness of the Code depended upon the existence of an international criminal jurisdiction and that the crimes covered by the draft Code should accordingly come under the court's jurisdiction. That did not mean, however, that the court's jurisdiction could not also cover some international crimes provided for in international conventions in force. Indeed, many members had stressed that the court's statute and the Code should constitute separate instruments and that a State should be able to become a party to the statute without thereby becoming a party to the Code and be free to confer jurisdiction on the court with regard to certain crimes defined in international conventions.

16. The question of who could bring a complaint before the court had given rise to an interesting discussion in plenary meeting. Many members had agreed that States parties to the statute should have the right to institute proceedings before the court, it being understood that evidence for the purpose of indictment or trial of an individual alleged to have committed a crime could also be submitted by other States or by organizations. Some members had further suggested that, under certain conditions, a State not party to the statute might be authorized to have recourse to the court.

17. On the difficult question of which State or States should give consent for the court to have jurisdiction in respect of an individual charged with a crime, he referred to the relevant paragraphs of the report.

18. On the question of the law to be applied, attention had been drawn to the need to distinguish between the rules applicable to the definition of the crime and the rules governing the rights of the accused and the conduct of the trial. With respect to the first set of rules, the prevailing view had been that, under the principle nullum crimen sine lege, the source of applicable law should be limited to international conventions defining crimes under international law. The view had, however, been expressed that international custom was also a source of substantive law in that context. By way of illustration, mention had been made of apartheid, which was generally considered a crime against the peace and security of mankind, even by States which had not ratified the relevant Convention. Reference had also been made to the fact that the Nuremberg and Tokyo Tribunals had had to rely on customary law. Interesting points of view had been expressed in connection with other possible sources of applicable law, in particular, the resolutions of international organizations, the principles generally recognized by States, judicial decisions and doctrines of publicists, as well as internal law.

19. A brief discussion had been held in plenary meeting on the question of the relationship between an international criminal jurisdiction and the Security Council, particularly with regard to certain crimes such as aggression or threat of aggression. In that connection, the proposition that if the Security Council made no findings, the court would be entirely free to

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act in its judicial capacity had gathered a large measure of support. However, if the Security Council concluded that there had been an act of aggression, the question arose as to whether the court might be free to reach a contrary conclusion in proceedings before it. That question had given rise to divergences of views in the Commission.

20. With regard to the question of proceedings relating to compensation, some members had supported the Special Rapporteur's suggestion that an international criminal court might deal both with the criminal trial of an accused person and with the issues of compensation arising therefrom. Many members, however, had expressed strong reservations about the possibility of intermingling strictly criminal proceedings against individuals and civil claims for damages.

21. On the question of the handing over of an alleged criminal to the court, many members had supported the Special Rapporteur's suggestion that every State Party to the court's statute should be required to hand over to the prosecuting authority of the court, at the court's request, any alleged perpetrator of a crime coming within its jurisdiction, and that such handing over did not constitute an extradition. On the other hand, some members had pointed out that it was essential to ensure respect for the fundamental principles of justice and the basic human rights of the accused.

22. On the question of the "double-hearing principle" or two-tiered jurisdiction, many members had supported the Special Rapporteur's suggestion that the proposed court should be organized in such a manner as to ensure that a first ruling by the court could be reviewed within the system of the court itself. That, in their opinion, was a fundamental guarantee in any criminal proceedings, which was enshrined in article 14, paragraph 5, of the International Covenant on Civil and Political Rights.

23. At the end of the discussion in plenary meeting the Commission had decided to set up a Working Group with the mandate defined in paragraph 3 of General Assembly resolution 46/54. The Working Group would also draft concrete recommendations with regard to the various issues which it could consider and analyse within the framework of its mandate.

24. The outcome of the work carried out by the Working Group was reflected in its report, which appeared in the annex to the Commission's report (A/47/10). It was doubly important, first, because it analysed thoroughly and with a high degree of technical expertise the issues involved in the possible creation of an international criminal jurisdiction, and second, because the Commission had accepted as a basis for its future work the propositions enumerated in the Working Group's report and the broad approach set out therein.

25. The recommendations which the Working Group had arrived at were based on what had been perceived as the minimum common denominator possible to achieve consensus on further work on the question. The Working Group had initially

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identified five "clusters" of specific issues which had arisen from the discussion in the plenary Commission, namely, the basic structure of a court or of the other options for an international trial mechanism; the system of bringing complaints and of prosecuting alleged offenders; the relationship of the court to the United Nations system, and especially to the Security Council; the applicable law and procedure, and especially the issue of ensuring due process to accused persons; and how to bring defendants before a court, the relationship between that process and extradition, international judicial assistance to proceedings before a court and the implementation of sentences. The Working Group's report analysed each of those issues and sought to provide enough by way of an indication of its preferred approach in as balanced a manner as possible, but without going into excessive detail. The aim throughout had been to provide enough information and argument to enable a judgement to be made as to whether and how to proceed.

26. The report of the Working Group (A/47/10, annex) consisted of an introduction followed by five substantive parts. The first substantive part, part 2, entitled "General arguments relating to an international criminal court", reviewed the arguments for and against a court and considered other possibilities. Under the Working Group's approach, any attempt to establish a workable international trial system must start from a modest and realistic base. National criminal justice systems were expensive and complex and it would be difficult and infinitely more costly to replicate such systems at the international level. That was due to the fact that there was no body of international experience of the exercise of criminal jurisdiction to call on, such as had been available in the field of international arbitration when the Permanent Court of International Justice and its successor, the International Court of Justice, had been created. In those circumstances, it was better to seek to establish a flexible facility which would be available in case of need at the international level. For those reasons, the Working Group had been in general agreement that the court would be essentially a facility for States parties to its statute (and possibly, on defined terms, for other States). Certain conclusions followed from that basic approach: the court should not have compulsory jurisdiction; it would not have exclusive jurisdiction, in the sense of a jurisdiction which excluded the concurrent jurisdiction of States in criminal cases; and it should not be a full-time body, but rather an established structure which could be called into operation when required.

27. Part 3 addressed seven issues, namely (a) the method of creation of a court; (b) the composition of a court; (c) the ways by which a State might accept the jurisdiction of a court; (d) jurisdiction ratione materiae; (e) jurisdiction ratione personae; (f) the relationship between a court and the Code of Crimes; and (g) possible arrangements for the administration of a court.

28. With respect to the court's jurisdiction ratione materiae, the Working Group thought that it should extend to specified existing international treaties creating crimes of an international character, including the draft

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Code of Crimes against the Peace and Security of Mankind (subject to its entry into force). Furthermore, in the Working Group's view, when drafting the Statute of a court, the possibility should be left open that a State might become a party to the Statute without thereby becoming a party to the Code, or that a State might confer jurisdiction on the court with respect to the Code, or with respect to one or more crimes of an international character defined in other conventions, or an ad hoc basis. The criterion should be that of maximum flexibility with regard to the jurisdiction ratione materiae of a court, and that would be most readily achieved if the Code and the Statute of a court were separate instruments. However, as indicated in the Working Group's report (A/47/10, annex, para. 464), that substantive conclusion was without prejudice to the question of the treatment of the subject within the Commission, bearing in mind the connection of the issue in the General Assembly to the draft Code of Crimes and to the proposal of Trinidad and Tobago, which had called in 1989 for an international court or other mechanism to assist States in dealing with such problems as trafficking in narcotic drugs.

29. General Assembly resolution 46/54 had requested the Commission to examine, inter alia, "proposals for the establishment of an international criminal court or other international criminal trial mechanism". Part 4 explored the various possible options in that regard. Its basic premise was that, whether at the national or the international level, in relation to serious offences of an international character defined in the various treaties and in the draft Code of Crimes, the only appropriate "trial mechanism" was a criminal court, duly constituted - in other words, a body with appropriate guarantees of independence exercising judicial functions. One line of argument in the Working Group had suggested that the words "other international criminal trial mechanism" had in mind the creation of a very flexible, essentially voluntary mechanism. As indicated, the Working Group accepted much of the thinking behind that approach. The suggested outline for an international criminal court was as flexible, facultative and voluntary as an international court could be.

30. According to another line of argument, what was needed was a mechanism to assist national trial systems. The Working Group had discussed various suggestions in that respect, but the majority of its members had thought that those suggestions did not address the major concerns that underlay calls for an international criminal jurisdiction.

31. Part 5 of the Working Group's report dealt in particular with the question of applicable law. In its report (A/47/10, annex, para. 501), the Working Group concluded that it was not easy to condense the various aspects of the question into a brief formula. In particular, a general clause, paralleling Article 38 of the Statute of the International Court, would not do justice to the complexity of the issues. None of the categories of rules listed in Article 38 could be dispensed with, but it might be necessary to add references to other sources such as national law, as well as to the secondary

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law enacted by organs of international organizations, in particular the United Nations.

32. Lastly, in part 6, on prosecution and related matters, the Working Group outlined some possible solutions to the general question of how proceedings could be initiated before an international criminal court. Its discussion was based on the assumption that such a court would not try defendants in absentia. The following issues were examined: (a) the system of prosecution; (b) the initiation of a case; (c) bringing defendants before a court; (d) international judicial assistance in relation to proceedings before a court; (e) the implementation of sentences; and (f) the relationship of a court to the existing extradition system.

33. In paragraph 104 of its report (A/47/10), the Commission had accepted as a basis for its future work the proposals enumerated in paragraph 396 of part A of the Working Group's report. It had agreed that the study in the Working Group's report had confirmed the view that a structure along the lines of the one suggested in the report could provide a workable system. The Commission had also concluded that, through the ninth and tenth reports of the Special Rapporteur and the report of the Working Group, it had completed the task of analysis of the question of establishing an international criminal court or other international criminal trial mechanism, entrusted to it by the General Assembly in 1989. Further work in that area would therefore require a new mandate from the General Assembly providing a clear and specific indication as to how to proceed in the future. The Commission had gone beyond the stage of general and exploratory studies; the next step would be the elaboration of a detailed draft statute. Every year in the relevant resolution, the General Assembly requested the Commission to indicate the issues on which Governments should express their views. The Commission had done so in paragraph 15 of its report. It was of the utmost importance for Governments to take a clear stand on whether it should now undertake the elaboration of a draft statute on an international criminal court.

34. He then turned to chapter III of its report, on State responsibility. Under the general plan adopted by the Commission at its thirty-seventh session in 1975, the draft would consist of a Part One on the origin of international responsibility; a Part Two on the content, form and degrees of international responsibility, and a possible Part Three on the question of settlement of disputes and the implementation of international responsibility. The Commission had provisionally adopted Part One on first reading in 1980. It was currently dealing with Part Two, which would have four chapters. Chapter One had been provisionally adopted on first reading in 1986. Chapter Two, on the legal consequences of an international delict, would have two sections. At its forty-fourth session, the Commission had focused its attention on future sections 1 and 2 of Chapter Two. With regard to section 1, it had received from the Drafting Committee articles 6 (Cessation), 6 bis (Reparation), 7 (Restitution in kind), 8 (Compensation), 10 (Satisfaction) and 10 bis (Assurances and guarantees of non-repetition).

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In line with its policy of not adopting articles not accompanied by commentaries, the Commission had agreed to defer action on the proposed draft articles until its next session. At the same time, the Commission had decided that the statement made in plenary meeting by the Chairman of the Drafting Committee in introducing the proposed draft articles should be placed at the disposal of members of the Sixth Committee. The Drafting Committee had reserved the possibility of supplementing articles 6 to 10 bis with other provisions. The fact that the Drafting Committee's work on section 1 of Chapter Two had not yet taken definitive shape was an added reason for deferring comments on it.

35. The Commission had also given considerable attention in plenary meeting to the topic of State responsibility. Its discussions had been based on the third and fourth reports of the Special Rapporteur, both of which had dealt with the legal regime of the measures that an injured State might take against a State having committed an internationally wrongful act and more specifically, in principle, with the measures applicable in the case of delicts. The prevailing view in the Commission had been that, although the measures in question were tantamount to reprisals, they should be referred to as "countermeasures", the term used in article 30 of Part One of the draft, as well as by the International Court of Justice and by arbitral tribunals. Some members had expressed doubts on the advisability of dealing with that issue in the context of the draft articles on State responsibility. They had questioned the compatibility of countermeasures with contemporary international law. They had also pointed out that the application of countermeasures could lead to abuses as a result not only of power disparities but also of the inherent risk of starting spirals of escalation detrimental to the stability of international life. However, most members had thought that, given the imperfect nature of law enforcement mechanisms at the international level, some latitude had to be left for direct, independent action by injured States and that the elaboration of a legal regime would keep the scope of permissible unilateral initiatives to a minimum. Such was the position of the Special Rapporteur in his third and fourth reports. Those reports contained three articles (articles 11, 12 and 13) on the conditions for the legality of countermeasures and a fourth article (article 14) on prohibited countermeasures.

36. Under article 11, entitled "Countermeasures by an injured State", lawful resort to countermeasures was conditional upon (1) the actual existence of an internationally wrongful act and (2) the prior submission by the injured State of a demand of cessation/reparation. Those two conditions had generally met with the Commission's approval. Some members, however, had insisted that the basis for lawful resort to countermeasures was not so much the internationally wrongful act as the prejudice caused by that act and had said that their approach would limit abuses, restrict the number of States that could claim the right to resort to countermeasures and reduce the risk of subjective evaluations.

37. Article 12, entitled "Conditions of resort to countermeasures", required in its paragraph 1 that before resorting to countermeasures the injured State should have exhausted all available amicable settlement procedures and duly communicated its intention to the wrongdoing State. Some members had suggested the possibility of making the exhaustion of amicable settlement procedures not a precondition for resort to countermeasures, but a parallel obligation, in other words, to provide for a regime in which the right to impose countermeasures would be suspended if the wrongdoing State agreed to a dispute settlement procedure in which a legally binding determination as to the wrongfulness of the act could be reached and reparation required. The Special Rapporteur had pointed out in reply that an injured State normally would be able to demonstrate that the wrongdoing State was using delaying tactics to escape its obligation of cessation or reparation. It also had the possibility of resorting to interim measures of protection and would, in any case, under paragraph 2 of the article, be relieved from the requirement of exhaustion of available settlement procedures if the wrongdoing State failed to cooperate.

38. Article 12, paragraph 2, listed the cases where the requirements in paragraph 1 did not apply. The first such case concerned the failure of the wrongdoing State to cooperate. The second case concerned interim measures of protection taken by the injured State until the admissibility of such measures had been decided upon by an international body within the framework of a third party settlement procedure. The third case related to countermeasures taken as a result of the wrongdoing State's failure to comply with interim measures of protection ordered by an international body. The paragraph had generally met with a favourable reaction in the Commission, although concern had been expressed by some members that excepting measures of protection taken by the injured State might lead to a weakening of the fundamental principle laid down in Article 33 of the United Nations Charter.

39. Article 13, dealing with proportionality, provided that, in determining whether countermeasures were not disproportionate, account would be taken of the gravity not only of the internationally wrongful act, but also of its effects. While proportionality generally had been recognized as a crucial element in determining the lawfulness of a countermeasure, several members had been concerned that it might provide an illusory guarantee against abuse, particularly since the Special Rapporteur had abandoned the distinction made by his predecessor between action taken by way of reciprocity, i.e., connected with the obligation breached, and action taken by way of reprisal. As a result, a breach in one field of law could trigger a countermeasure in another area of relations between States concerned that was totally removed from the one in which the original obligation had been breached. Various suggestions had been made for clarifying the scope and content of proportionality (A/47/10, paras. 211 to 216).

40. Article 14 on prohitibed countermeasures occupied a central place in the regime which had been devised by the Special Rapporteur. Under paragraph 1,

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prohibited countermeasures included those involving the threat or use of force, those violating the rules of international law on the protection of human rights, diplomatic law or the peremptory norms of international law and those violating the rights of third parties. While there had been a broad measure of agreement in the Commission on those five elements, the proposed formulation had been viewed as too analytical and as having the twofold drawback of raising problems of overlap between the unresolved concepts involved and entailing the risk of undesirable a contrario interpretations. Concerns also had been expressed that the catalogue of prohibited countermeasures might not be exhaustive.

41. As to paragraph 2, it had been widely acknowledged that extreme measures of political or economic coercion could have consequences as serious as those arising from the use of armed force. However, many members had found it imprudent for the Commission to reopen the question of the meaning of the term "force" as used in Article 2, paragraph 4, of the Charter and various alternatives had been envisaged to deal with the issue. Paragraphs 1 and 2 of article 14 therefore would have to be carefully reviewed. At the conclusion of its debate, the Commission had agreed to refer the four articles proposed by the Special Rapporteur to the Drafting Committee.

42. He drew attention to the last part of Chapter III, entitled "The question of countermeasures in the context of articles 2, 4 and 5 of Part Two adopted on first reading at previous sessions of the Commission". The first of the issues dealt with "self-contained regimes". The question raised was whether the rules constituting those regimes affected - and, if so in what way - the rights of States parties to resort to the countermeasures provided for under general international law. The Special Rapporteur was of the view that the exercise of the facultés of unilateral reaction provided for under general international law must remain possible in at least two cases: first, in the case in which the State injured by a violation of the self-contained system had secured from the conventional institutions a favourable decision but was not able to obtain reparation through the system's procedures and, secondly, in the case in which the internationally wrongful act was an ongoing violation of the regime. The debate in the Commission had revealed three main trends on the question of self-contained regimes. Some members had felt that the matter was one of treaty interpretation and that the Commission therefore could leave it aside. Others had supported the Special Rapporteur's view that in all cases there was a "fall-back" entitlement to resort to the remedies provided under general international law. Lastly, others had felt that, as a matter of principle, procedures under existing international treaties should take precedence and that collective responses to unlawful conduct should be favoured and the unfortunately rare examples of self-contained regimes viewed as models to be followed in other fields of international life.

43. With regard to the second issue raised, namely, the relationship between the draft under elaboration and the United Nations Charter, the Special Rapporteur had indicated that the effect of article 4 would be to subordinate

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the provisions of the draft on State responsibility to the provisions of the United Nations Charter on the maintenance of international peace and security and, in particular, to any recommendations or decisions adopted by the Security Council in the discharge of its functions with respect to dispute settlement and collective security. He had expressed concern that the retention of article 4 would force the Commission to examine issues which lay outside its mandate, in particular, the relationship between chapters VI and VII of the Charter or the relationship between the Security Council and the International Court of Justice. Some members had been of the view that the power of decision of the Security Council was strictly confined to measures aimed at re-establishing international peace and security under Chapter VII of the Charter and that the Council was not empowered to impose on States settlements or settlement procedures in relation to disputes or situations dealt with in Chapter VI, on which it only could make recommendations. Other members had felt that the comments of the Special Rapporteur were inconsistent with the responsibilities of the Security Council, the object of Chapters VI and VII of the Charter and contemporary practice.

44. The third issue which had been raised by the Special Rapporteur was related to the definition of the term "injured State", which was contained in article 5 adopted on first reading. Under that article, the infringement of any right of a State constituted, with or without material damage, an injury. Thus, a violation of obligations arising, for example, under rules concerning disarmament, promotion of and respect for human rights and environmental protection simultaneously injured the subjective rights of all the States bound by the norm, whether or not they were specifically affected. Whether one distinguished between "directly and indirectly injured States" or, as the Special Rapporteur preferred, between "differently injured States", the problem arose of determining to what extent each of the States was entitled, on the one hand, to claim cessation, restitution in kind, pecuniary compensation, satisfaction and/or guarantees of non-repetition and, on the other hand, to resort to sanctions or countermeasures. The Special Rapporteur had attempted to solve those problems by suggesting the inclusion of a new article 5 bis, which was produced in footnote 57 of the report. Some members had supported that proposal; others preferred to indicate, either in the draft articles or in the commentary, first, that the capacity of differently injured States to take countermeasures should be proportional to the degree of injury suffered by the State taking the measures and, secondly, that if the most affected State or States disclaimed restitutio in integrum, no other State should be able to claim it.

45. He turned next to chapter IV of the report, devoted to the topic of international liability for injurious consequences arising out of acts not prohibited by international law, emphasizing in that connection the increasing relevance of the Commission's endeavours to formulate a theoretical legal basis for general principles of environmental law, in the light of the progress made at the Rio Conference in regard to the protection and preservation of the global environment. At its last session, the Commission

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had considered the eighth report of the Special Rapporteur which, based on the majority view, had separated out prevention and presented a series of articles intended as recommendations or guidelines to States. The Special Rapporteur had also proposed clearer definitions of the concepts of risk and harm, taking into account new developments in environmental law. It was his intention to dwell in particular on the decisions taken by the Commission on the topic, since they would determine the orientation of its future work.

46. In his report, the Special Rapporteur proposed to draw a distinction between prevention of transboundary harm and compensation for transboundary harm. Two sets of rules would thus be formulated. Under the first, States would be called upon to take unilateral preventive measures by adopting rules and regulations in respect of their industrial or other activities that might cause transboundary harm. Under the second set of rules, private operators would be held liable for transboundary harm caused by them and States would make proper domestic legislative modifications to that end. Nine articles on prevention, of a recommendatory nature, were proposed in the report. The articles concerned both activities causing transboundary harm and activities involving a risk of causing such harm, and provided for various measures, including legislative ones, to be taken by States in whose territory such activities were about to be undertaken. They were advised to resort to licensing systems to compel their industries to conduct environmental assessments and use the best available technology. The articles also provided for information and notification procedures, to be applied in case of potential transboundary harm, and for consultations aimed at removing or reducing harm or the risk of it. A number of factors were listed which the negotiating States should take into account in reaching agreement. Lastly, methods for dispute settlement were also recommended.

47. As part of the debate in the Commission on general issues, many members had noted with concern that progress had been slow and that the theoretical basis of the topic had not yet been clearly defined. Some had attributed the lack of progress to the absence of consensus on the general approach to the topic and on its scope. Divergent views had been expressed on a series of questions, such as whether attention should focus on prevention of transboundary harm or extend to liability for harm caused, whether consideration should be given only to activities which normally caused transboundary harm or also to activities involving a risk of causing such harm, and whether the Commission should aim at developing guidelines and recommendations on the subject or at formulating binding rules. In the absence of consensus on those basic questions, no progress could be achieved.

48. Although it might seem that the debate on that topic at the Commission's last session had been entirely fruitless, it had in fact prompted the identification of areas in which general agreement could be reached. To that end, an open-ended Working Group had been established which had taken a number of decisions, reflected in paragraphs 344 to 349 of the report. The decisions did not cover every aspect of the topic, nor were they final, but they

provided a minimum basis of consensus and could be reviewed and possibly broadened as appropriate. The decisions related to the scope of the topic, the nature of the instrument to be drafted, the choice between the concept of "acts" and the concept of "activities" and the content of the Special Rapporteur's next report.

49. With regard to the first point, the Commission had noted that, although it had identified the broad area of the topic, it had not yet made a final decision on its precise scope. It had agreed that in order to facilitate progress on the subject, it would be prudent to approach its consideration in stages and to establish priorities. Lastly, it had decided that although the topic should be understood as comprising both issues of prevention and of remedial measures, prevention should be considered first and only then should the ILC proceed to the question of remedial measures which in that context might include those designed for mitigation of harm, restoration of what had been harmed and compensation for harm caused. Once articles had been drafted on those two aspects of activities having a risk of causing transboundary harm, the Commission would decide on the next stage of the work.

50. With regard to the nature of the instrument to be drafted, the Commission had decided to defer the decision, in accordance with its usual practice, until the work had been completed. The Commission would examine and adopt the articles proposed for the topic, on the basis of the merits of the articles, their relevance to the contemporary and future needs of the international community and their possible contribution to the promotion of the progressive development of international law and its codification in that area.

51. With respect to the choice between the concept of "acts" and the concept of "activities", the Commission had decided to maintain its working hypothesis according to which the topic dealt with "activities" and to keep the title unchanged since further work on the topic might make additional changes necessary. In due course, the Commission would make a comprehensive recommendation on the title of the topic.

52. In view of those decisions, the Commission had requested the Special Rapporteur, in his next report, to examine further the issues of prevention only in respect of activities having a risk of causing transboundary harm and to propose a revised set of draft articles to that effect.

53. Turning to the last chapter of the report, entitled "Other decisions and conclusions of the Commission", he said that the Commission intended to complete by 1994 the second reading of the draft articles on the non-navigational uses of international watercourses, and by 1996 the second reading of the draft articles on the Code of Crimes against the Peace and Security of Mankind and the first reading of the draft articles on State responsibility. The Commission also intended to make substantial progress on the topic "International liability for injurious consequences arising out of acts not prohibited by international law" and to undertake work on one or more new topics.

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54. In regard to the long-term programme of work dealt with in subsection 2 of section D, the Commission had taken steps with a view to identifying topics which might be recommended to the General Assembly for inclusion in the Commission's programme of work and would report on the matter in due course.

55. In an effort to streamline its procedures and increase its efficiency, the Commission had adopted guidelines on the composition and working methods of the Drafting Committee and on the format of its report to the General Assembly and would start implementing those guidelines as far as possible at its next session.

56. In accordance with the wish expressed by the General Assembly in resolution 46/54, the Commission had resumed its consideration of the possibility of dividing its annual session in two parts and in that connection had considered a preliminary study prepared by the Secretariat on the administrative and financial implications of such a division. It subsequently came to the conclusion that the suggestion of dividing the annual session in two parts had not received enough support and had indicated that improvements in the effectiveness of its work should continue to be sought under the current arrangements.

57. With regard to the Commission's contribution to the Decade of International Law, the idea of issuing a publication containing a series of articles, prepared by members of the Commission, on the main problems of international law on the eve of the twenty-first century had been accepted in principle. Preparatory work was already under way and would continue at the next session. Other suggestions were under study.

58. As indicated in section E, the Commission had continued its cooperation with other legal bodies, including the Asian-African Legal Consultative Committee, the European Committee on Legal Cooperation and the Inter-American Juridical Committee. The Commission set great store by its relationship with those bodies since they enabled it to keep abreast of their activities.

59. Section H dealt with the twenty-eighth session of the International Law Seminar, which was funded by voluntary contributions from Member States and through fellowships awarded by Governments to their own nationals. The Commission had noted with particular appreciation that the Governments of Austria, Denmark, Finland, France, Germany, Hungary, Jamaica, Morocco, Sweden, Switzerland and the United Kingdom had made fellowships available, in particular to participants from developing countries through voluntary contributions to the appropriate United Nations assistance programme. Of the 619 participants, representing 147 nationalities, who had taken part in the Seminar since its inception in 1964, fellowships had been awarded to 326.

60. The Commission continued to attach great importance to the Seminar, which enabled young lawyers to familiarize themselves with its work and thereby promoted international law. However, since all the available funds were

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almost exhausted, the Commission recommended that the General Assembly should again appeal to States which were in a position to do so to make the voluntary contributions that were needed for the holding of the Seminar in 1993 with as broad a participation as possible.

The meeting rose at 11.50 a.m.

UNITED NATIONS

General Assembly

FORTY-SEVENTH SESSION

Official Records

SIXTH COMMITTEE
21st meeting
held on
Tuesday, 27 October 1992
at 10 a.m.
New York

SUMMARY RECORD OF THE 21st MEETING

Chairman: Mr. ZARIF (Islamic Republic of Iran)

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The meeting was called to order at 10.10 a.m.

AGENDA ITEM 129: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-FOURTH SESSION (continued) (A/47/10, A/47/95, A/47/441-S/24559)

1. Mr. BERMAN (United Kingdom), speaking on behalf of the European Community and its member States, said that those States had become increasingly concerned at the frequent and widespread violations of international humanitarian law, including grave breaches of the Geneva Conventions. Moreover, despite existing provisions, including international conventions providing for universal jurisdiction and containing the principle "prosecute or extradite", which enabled certain crimes to be dealt with in national courts, those provisions had not proved sufficiently effective.

2. In recent years, the International Law Commission had been considering the whole question of an international criminal jurisdiction. The work done on the topic in 1992 by the Commission's Working Group had been particularly valuable and timely. The European Community and its member States believed that the Commission's request to be given a renewed mandate to draft the statute of an international criminal court with universal jurisdiction should be accepted. The report of the Working Group was a good basis. The renewed mandate should call on the Commission to complete its work in the shortest possible time.

3. In fulfilling the mandate, the Commission should take into account the views expressed during the current debate. The European Community and its member States also suggested that States should be given an opportunity to supply more detailed comments by early 1993 so that the Commission would be able to take them into account in its work at its 1993 session.

4. Mr. FLATLA (Norway), speaking on behalf of the Nordic countries, said that those countries supported the elaboration of a Code of Crimes against the Peace and Security of Mankind. However, many international crimes, such as genocide, war crimes, hijacking and sabotage of aircraft, the taking of hostages and illicit trafficking in narcotics were defined in existing and generally accepted treaty law. The establishment of an international criminal court which could investigate those crimes should not await the finalization of the draft Code, which could take considerable time. The Nordic countries were among those States which had difficulty in following the line of reasoning so far adopted for the draft Code; in due course they would submit written comments and observations on the provisional draft articles of the Code.

5. On the question of the establishment of an international criminal court or other international criminal trial mechanism, the Working Group had submitted a comprehensive report which formed an excellent basis for future work on the topic. The Commission noted in its report that it had concluded the task of analysis of "the question of establishing an international criminal court or other international criminal trial mechanism" and that

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further work on the issue required a renewed mandate from the General Assembly so that the Commission could proceed to the detailed work that would be required in drawing up a statute and associated rules of procedure for an international criminal jurisdiction. The Nordic countries were in favour of such a mandate being given. At the same time, their analysis of the Commission's proposals was without prejudice to their position on the proposals made elsewhere for the establishment of an international tribunal to punish those repsonsible for the war crimes that had been and were being committed in the former Yugoslavia.

6. The Working Group had expressed the opinion that a structure along the lines suggested in its report could be a workable system. The Nordic countries believed that it would be worthwhile to establish such a court. When drawing up the statute, the Commission must ensure that the system would be able to bring to trial those guilty of gross violations of international humanitarian law.

7. The Nordic countries shared the Commission's view that an international criminal court should be established by a statute in the form of a treaty agreed to by States parties and that the court should not be a full-time body. In paragraph 433 of its report, the Working Group pointed out that criminal justice systems at the national level were costly and complex, and that it would be very expensive to replicate such systems at the international level. The Nordic countries were prepared to consider the idea that the President of the court alone would act in a full-time capacity, and also the possibility of using the office of the Legal Counsel of the United Nations as a bureau for the court.

8. The Nordic countries agreed with the Working Group that the judges must be completely independent and act in their personal capacity, while at the same time possessing the necessary professional expertise. Care should be taken to ensure continuity and uniform legal practice within the court.

9. The Nordic countries endorsed the suggestion made by the Working Group that by becoming a party to the statute, a State would only accept certain administrative obligations and that acceptance of the jurisdiction of the court over particular offences would require a separate jurisdictional act. The Nordic countries also agreed that access to the court should be as open as possible, allowing States that were not party to the statute to accept the jurisidiction of the court on an ad hoc basis. On the other hand, they considered that the idea that international organizations should have the right to bring complaints before the court was premature.

10. Turning to the subject-matter of the court's jurisdiction ratione materiae, the Nordic countries supported the idea that the Code and the statute of the court should be separate instruments. With reference to paragraphs 449 to 451 of the Working Group's report, the Nordic countries believed that the treaties and conventions on the basis of which a court would

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adjudicate should be specified in advance, and that the court's competence should be limited to crimes of a serious nature.

11. The court's jurisdiction ratione personae was a most difficult question. The main reason for setting up an international court must be to establish a system that would be able to bring to trial those guilty of serious violations of relevant international law. Therefore, in the opinion of the Nordic countries, it was not in conformity with the concept of an international criminal court to require the consent of the country of which the perpetrator was a national.

12. Consideration should also be given to the question of whether the consent of the country in which the crime was committed should always be required. Particularly in cases of serious violations of human rights, it might be necessary for the court to be able to adjudicate the matter regardless of whether the State in question gave its consent. The Nordic countries shared the view that a court should apply to individuals only; they could in general endorse the system envisaged by the Working Group.

13. The report of the Working Group did not provide a basis for detailed comments on the question of the rules of criminal procedure to be applied by a court and the legal safeguards that must be fulfilled. However, the Nordic countries presumed that the legal rights of the accused would be adequately safeguarded; in that respect, he referred to the statement he had made in the Committee in 1991.

14. With regard to the principle nullum crimen sine lege, the Nordic countries agreed that it would be a matter for each State Party to ensure that its internal law gave effect to the treaties in force specifying crimes of an international character. However, the court's ability to bring guilty parties to justice should not depend on whether a violation took place within a State whose internal laws did not give effect to the treaties in force specifying the crimes in question, or was directed against another State whose internal laws did give effect to such treaties. The Nordic countries encouraged the Commission to consider carefully how such loopholes could be avoided.

15. As to the principle nulla poena sine lege, few, if any, of the treaties in force specifying crimes of an international character contained relevant penalties to be applied at the international level. The Nordic countries fully endorsed the view of the Working Group in that respect, and believed that a residual provision should apply in cases where no penalty had been specified in the treaty in force.

16. The Nordic countries lent their full support to the idea that the Code must refrain from imposing the death penalty. On the question of proceedings relating to compensation, the Nordic countries had reservations about the idea of intermingling strictly criminal proceedings and civil claims for damage, which should be dealt with under the topic of State responsibility.

(Mr. Flatla, Norway)

17. The Nordic countries endorsed the Working Group's suggestion that the court should not be empowered to try an accused person in absentia. The problem of how the accused should be brought before the court must be viewed in connection with the issue of which countries must give their consent to the court considering the case in question. Secondly, the Special Rapporteur was of the view that transferring an accused person to the court should not be considered as an extradition. Whether or not that was a correct approach depended on the interpretation of the internal legislation of the various countries. The Nordic countries, for their part, considered that such a transfer was a form of extradition.

18. The Nordic countries believed that the issue of extradition should be regulated in more detail in an annex or protocol to the statute of the court. The Working Group indicated in its report that it would be inclined to recommend a provision whereby States which had accepted the jurisdiction of the court with respect to an offence should be obliged to hand over an accused person to the court at the request of another State party that had accepted the same obligation. The Nordic countries were in favour of that approach.

19. The Nordic countries saw no reason why the court should not be associated with the United Nations in one way or another, as long as the court's independence was guaranteed. The Nordic countries encouraged the General Assembly to renew the mandate of the Commission to proceed with the drawing up of the statute and associated rules of procedure for an international criminal jurisdiction, based on the proposals of the Working Group and the guidance received from the Committee.

20. Mr. DESCHENES (Canada) said that the establishment of an international criminal jurisdiction had been debated at the United Nations since the 1940s without an agreement, since the separation of the world into blocs had prevented the achievement of the consensus necessary for that purpose. However, since the General Assembly had first invited the Commission to study the desirability of establishing such a judicial organ, and in the face of persistent violations of humanitarian law, human rights and international legal norms, it appeared that such a consensus might finally be emerging.

21. The International Law Commission had provided a basis for that consensus. Through its work over the previous 10 years, it had set out the framework of a consensus for a jurisdiction for prosecuting those accused of international crimes. Canada believed that the time had come to advance the work of the Commission by agreeing to its recommendations to begin the drafting of a statute for an international criminal jurisdiction. It would provide a permanent, neutral international forum to determine questions of individual criminal liability.

22. In its 1992 Report, the Commission noted that recent events on the international scene had clearly shown that the existence of such an organ could have provided a smooth way out of situations susceptible of leading to

(Mr. Deschenes, Canada)

international friction. A court would provide a permanent mechanism capable of responding immediately to events as they occurred, since it could be triggered by States without the delay that might be necessary to negotiate the creation of an ad hoc tribunal. Such a body would strengthen the principle of universal jurisdiction over individuals who had committed international criminal acts, since it would objectively and uniformly implement criminal liability provisions from existing treaty law, with a significant deterrent value.

23. While the Sixth Committee had been aware from the outset of the need to examine the establishment of an international jurisdiction as part of the subject of international criminal liability, the focus of attention on such questions had begun to sharpen in 1989 and had continued until, at its forty-sixth session, the General Assembly had expressly invited the Commission to consider the proposals for the establishment of such a court (resolution 46/54). After extensive discussions and thanks to the contribution of its Working Group, the Commission had concluded that the establishment of such a structure was possible.

24. Canada concurred with that view and reiterated that the time had come for the General Assembly to provide the Commission with a clear mandate to draft the statute of an international criminal court. The Special Rapporteur and the Working Group had laid an excellent foundation for progress on the draft, which had his country's full support. The resolution to be adopted for that purpose should assign top priority to that measure so that the Commission could try to adopt a draft on first reading at the following year's session and could submit it to the Sixth Committee at the forty-eighth session of the General Assembly.

25. With regard to the jurisdiction of the court, the Commission proposed a flexible, viable and effective formula: the new legal body would have jurisdiction over a band of offences which was universally acceptable to members of the international community and which, moreover, could draw on all the crimes set out in the draft Code of Crimes against the Peace and Security of Mankind, which had been adopted on first reading by the Commission at its forty-third session. At the same time, his delegation recognized the need for further work on a range of technical legal questions connected with the establishment of an international criminal jurisdiction and, in particular, the aspects of jurisdiction, enforcement of decisions, and the guarantee of due process. Nevertheless, none of those technical problems was insurmountable.

26. He hoped that the resolution would call upon the Commission to draw on the contribution of all relevant branches of legal expertise in resolving the technical questions, particularly experts in international law and noted that the International Centre for Criminal Law Reform had planned to convene at Vancouver, Canada, in 1993, an international meeting of experts to advance thinking on the establishment of an international criminal court.

(Mr. Deschenes, Canada)

27. In connection with the other elements of the Commission's work, he welcomed the tabling at the forty-sixth session of the General Assembly of the draft Code of Crimes, which had been adopted the previous year at first reading. His delegation, in keeping with the appeal made by the General Assembly in resolution 46/54, proposed to present its submissions in writing. The original mandate given to the Commission by the General Assembly in 1947 focused in particular on a small cluster of international crimes codified in the Nürnberg Charter. If the goal was universal acceptance and application, it was important for the drafters to focus on the common ground shared by States, rather than on less widely accepted categories of international criminal law.

28. Finally, his delegation believed that the two elements of individual criminal liability currently before the Commission, namely the court and the Code, would be best advanced on parallel but separate tracks. Canada supported the suggestion of the Working Group that any draft statute should hold open the option of adherence without necessarily becoming a party to an international code of crimes.

29. Mr. MONTAZ (Islamic Republic of Iran) said that the establishment of an international criminal jurisdiction to try persons accused of war crimes or violations of international law was a matter which had preoccupied students of international criminal law since the late nineteenth century and appeared in the Convention on the Prevention and Punishment of the Crime of Genocide and the International Convention on the Suppression and Punishment of the Crime of Apartheid.

30. In the Commission, the question had been closely linked since 1947 to the preparation of the draft Code of Crimes against the Peace and Security of Mankind. It was clear that the usefulness of the principles of Nürnberg and of an international criminal code was subject to the existence of an executing organ. Furthermore, the Commission had reached the conclusion that the establishment of such a jurisdiction raised no insurmountable legal difficulties, although there might be obstacles of a political nature owing to the reluctance of States to accept an international court which might call into question their sovereign rights.

31. In order to overcome those obstacles, it was necessary to establish a flexible and limited system of jurisdiction which preserved the principle of the universal jurisdiction of States recognized in various international conventions, based on the principle of universal punishment. Many States were reluctant to prosecute persons accused of international crimes who were located in their territory, but were also reluctant to allow their extradition owing to the absence of a suitable jurisdictional organ to try them. In that regard, the existence of an international organ mandated to fulfil that task would be useful and would fill that gap, provided that its jurisdiction was concurrent with national jurisdictions, in order to preserve the prerogatives that were inherent in the sovereignty of States.

(Mr. Montaz, Islamic Republic of Iran)

32. The acts of genocide committed against the Muslims of Bosnia and Herzegovina made it necessary to consider the possibility of extending to the Security Council right of access to such an international jurisdiction. It would be perfectly logical for the Security Council to be able, once it had determined the existence of violations of humanitarian law or other crimes of an international character, to initiate proceedings against the suspects.

33. Regarding the jurisdiction ratione materiae of the court, his delegation considered that its scope should not be restricted to offences classified in the future Code of Crimes against the Peace and Security of Mankind, or to precise offences, in order to make allowances for other international crimes that might result from the progressive development of international criminal law. However, the international community should agree upon certain general criteria that would make it possible to define offences that were truly of an international character. If no organic link was established between the Code and the future court, more States would be able to become party to the statute of the Court, without being compelled to accept the Code.

34. The Islamic Republic of Iran considered that the time was ripe for a decision on the desirability of establishing an international criminal court. Such a decision would unquestionably entail major political consequences and would depend on the political judgement of the members of the General Assembly. Until that decison had been taken, it would seem premature to begin to discuss technical matters such as the composition of the court, the penalties applicable or the trial system.

35. Mr. MIKULKA (Czechoslovakia) said that the history of the question of the establishment of an international criminal jurisdiction went back to 1950, when the Commission had reached the conclusion that the establishment of such a court was both possible and desirable. However, for want of a suitable climate, direct consideration of the issue had been postponed until the present. The idea of an international criminal court had been given a new thrust by the first reading of the draft Code of Crimes against the Peace and Security of Mankind, and above all by the consideration of the ninth and tenth reports of the Special Rapporteur on the question.

36. In compliance with the mandate received from the General Assembly (resolution 46/54, para. 3), the Commission had taken the view that its brief was to carry out a detailed and broad study of the issue, although restricting itself to analysis of technical aspects. His delegation approved of that approach, which seemed to be suited to the sensitive nature of the issue. The Working Group on an International Criminal Jurisdiction had selected the main issues raised by the question and had put forward concrete recommendations thereon, on the basis of the common denominator among the positions adopted during consideration of the two most recent reports of the Special Rapporteur. The Working Group had furthermore based its work on the assumption that in order to establish an international criminal jurisdiction it would be preferable to proceed in phases and had proposed a modest

(Mr. Mikulka, Czechoslovakia)

structure as an objective for the first phase. It had also considered the arguments for and against the establishment of an international criminal court. His delegation shared the view that the system of a national jurisdiction was insufficient to prevent international crime, in particular international crimes committed with the agreement of a State.

37. With regard to the conclusions of the Working Group contained in paragraph 396 of the Commission's report, his delegation agreed with the statement in subparagraph (i) that an international criminal court should be established by a statute in the form of a treaty, as that would ensure it operated independently and impartially. However, the possibility of establishing a mechanism by other means, and perhaps by a decision of the Security Council rather than a resolution of the General Assembly should not be excluded. Naturally, that method would solely apply in exceptional cases and the court thus established would be a special court.

38. Paragraph 396 (ii) contained a fundamental conclusion in respect of which there should be no doubt. It stated that a court should exercise jurisdiction only over private persons, as distinct from States. However, his delegation objected to the first sentence of the paragraph, which diminished the significance of the principle set out and again evoked the doctrine of the criminal responsibility of States, which his delegation could not support. Even setting aside doctrinal questions, it would be difficult to accept the suggestion that a single court could ever have jurisdiction simultaneously to try individuals and States through the same criminal procedure.

39. His delegation accepted the conclusion contained in paragraph 396 (iii) that the court's jurisdiction should be limited to crimes of an international character defined in specified international treaties in force. Such a requirement was suited to the first phase of the court's operation and was based on the objective of providing a simpler structure to set the mechanism under way. In that respect, attention should also be drawn to the linkage between the court and the Code of Crimes against the Peace and Security of Mankind. Once the Code had been adopted, it would be one of the treaties that came within the jurisdiction of the court. However, its jurisdiction should not be restricted to the crimes classified in the Code, no more than accession to the court's statute should be subordinated to accession to the Code. Otherwise the establishment of the court would be needlessly postponed and the possibility of widespread accession to the Statute would be considerably diminished.

40. Regarding jurisdiction ratione personae, both the Commission and the Working Group had considered the possible solutions to a potential conflict between the jurisdiction of the international criminal court and that of a State entitled to seek extradition by virtue of the aut dedere aut judicare principle. Although that was a sensitive issue, it was not insurmountable.

(Mr. Mikulka, Czechoslovakia)

41. Regarding paragraph 396 (iv), the court's jurisdiction would be concurrent with that of national jurisdictions and it would not be a compulsory jurisdiction, in the sense of a general jurisdiction which a State party to the statute was obliged to accept ipso facto. In the view of his delegation, that was a realistic solution on account of the flexibility it offered. The same flexibility would apply to the nature of the court, which would not be a standing body, but an institution which only came into operation when required. Regarding the possibility of establishing other mechanisms, his delegation shared the view of the Working Group that the only appropriate mechanism to consider serious criminal charges was a duly constituted criminal court. That was no reason for such cases not to be considered by other international mechanisms in order to enhance the effectiveness of national criminal jurisdiction.

42. By approving the recommendations contained in paragraphs 396 and 401 of its report, the Commission had completed the task entrusted to it by the General Assembly. It was now for the General Assembly to decide whether the Commission should undertake the detailed task of drafting the statute and rules of the international criminal court on the basis of the overall plan set out in the report of the Working Group. His delegation was prepared to support such a decision.

43. Mr. THIAM (Guinea), referring to the question of the establishment of an international criminal jurisdiction, said that the Commission had raised the issue of its mandate to the statute of an international criminal jurisdiction. His delegation supported the view that the Commission should be given a mandate to draft such a statute. In his view, a draft statute would facilitate a searching debate which would culminate with the submission of conclusions or recommendations to the General Assembly.

44. As far as the actual idea of establishing an international criminal jurisdiction was concerned, his delegation thought not only that it was timely and possible, but that the absence of an international body responsible for trying international crimes was a deficiency that should be made good. An international criminal jurisdiction would ensure the objective, impartial and uniform implementation of the Code of Crimes against the Peace and Security of Mankind. The Code would be ineffective if there was no jurisdiction to assert the authority of the international community in the struggle against such crimes.

45. While it was true that the sovereignty of States should not be infringed, it was also true that acceptance by States of the court's jurisdiction would be an act of sovereignty. It was simply a matter of determining, on the one hand, whether certain acts constituted crimes against humanity and should not remain unpunished and, on the other, whether the international community desired to bring into being the means of ensuring that punishment was inevitable.

(Mr. Thiam, Guinea)

46. The establishment ex post facto of an international criminal jurisdiction in the form of a multilateral treaty was preferable to the establishment of ad hoc bodies; a standing body would call for full-time judges, which would enhance their objectiveness and impartiality. Regarding whether the court's jurisdiction should be exclusive, optional, binding or concurrent, it would be the responsibility of States to make their decision known at the right moment. Flexibility was necessary in that respect. His delegation thought that the exercise of international judicial authority was incompatible with the principle of optional and concurrent jurisdiction, unless those crimes over which the court had exclusive jurisdiction were specifically identified, as the Commission had done in paragraph 41 of its report. Such a list would include all international crimes, and in particular those included in the Code of Crimes against the Peace and Security of Mankind.

47. The formal right to institute proceedings before the court should be vested in the State which had been the victim of the crime and in the Security Council, as the case might be. The law to be applied should be limited to the treaties defining crimes of an international character, with due observance of the universal principles of nullum crimen sine lege, nulla poena sine lege and non bis in idem, as well as the double jeopardy rule. Proceedings relating to compensation should be combined with criminal proceedings. Punishment in and of itself was not justice if there was no compensation for the damage caused by the crime. Accordingly, an international criminal court should have the power to rule in matters of civil liability. That would have the advantage of expediting matters.

48. The court should be organized in such a manner as to ensure review within the system of the court itself. To that end, a case should be heard in the first instance by a chamber of the court, and appeal should lie to the plenary court. The Guinean delegation agreed that the Commission should be given a renewed mandate to prepare a draft statute for an international criminal court.

49. Mr. BIGGAR (Ireland) said that, in the absence of guidance from the General Assembly, the Commission had not directly addressed the question of an international jurisdiction for several years, until the adoption in 1989 of General Assembly resolution 44/39. Since then, the topic had been considered repeatedly by the Commission and the Assembly had adopted resolutions 45/41 and 46/54, requesting the continuation of the work. At its most recent session, the Commission, after having considered the tenth report of the Special Rapporteur on the question of the possible establishment of an international criminal jurisdiction, had established a Working Group on the subject.

50. His delegation had noted that, in the report, the question of the establishment of an international criminal jurisdiction was not dependent on the adoption of a code of crimes against the peace and security of mankind. His delegation had also noted the Working Group's comment that the phase of preliminary consideration and analysis had been completed (A/47/10, para. 400).

(Mr. Biggar, Ireland)

51. Ireland was prepared to consider the possibility of establishing an international criminal jurisdiction outside the scope of the draft Code. It was likewise of the view that the time had come to proceed to a consideration of the practical problems connected with the establishment of an international court. Several issues arose at that stage, of which two were of particular interest: (a) which crimes would be considered by the court? and (b) what legal mechanism would be required for the effective functioning of the court?

52. With regard to the first question, his delegation endorsed the Working Group's view. Pending the entry into force of a code of crimes against the peace and security of mankind, the court's jurisdiction should extend to specified existing international treaties creating crimes of an international character. Only thus would certainty, an essential element of criminal law, be ensured. Ireland was likewise of the view that the court should deal only with a small number of exceptionally serious crimes which indicated a high level of moral and criminal guilt on the part of their alleged perpetrators.

53. As to the question of a legal mechanism, provisions should be adopted concerning: (a) an international criminal court; (b) the investigation of alleged offences; (c) the prosecution of charges; (d) safeguards for the accused; (e) penalties and their implementation and (f) a system of appeal.

54. The Irish delegation had already indicated its support for the creation of an international criminal court; however, the court, its jurisdiction and its powers must be established on a firm legal basis. The court's operation would have to meet very high standards of justice and fairness. In particular, the relationship between such a court and the national courts of Member States would need to be clearly defined, in order to avoid not only conflicts of jurisdiction but also double jeopardy. While concurrent jurisdiction appeared to be inevitable, consideration must be given to the opposite dangers arising from prior jurisdiction and a breach of the principle of non bis in idem. In that context, the handing over of an accused person was also likely to raise theoretical and practical problems. The Working Group's suggestion that such handing over was not an extradition was interesting, and his delegation awaited further development of that aspect. With regard to the investigation of alleged offences, the gathering of information should be carried out fairly, impartially and independently.

55. No court or legal system was infallible. Accordingly, in order to serve the cause of justice, provision should be made for an appeals procedure. For practical reasons, it would be desirable for that procedure to be applied within the structure of the court, rather than by a separate appeals court.

56. With regard to paragraph 15 of document A/47/10, the Irish delegation agreed that the Commission should embark on the elaboration of a draft Statute of an international criminal court and that it should be given a mandate to do so. The Working Group's basic propositions, as set out in paragraph 396 of the report, constituted a sound basis for the elaboration of such a draft statute.

57. Mr. BOS (Netherlands) said that, as suggested by the States members of the European Community, the General Assembly should request the Commission to give priority to the preparation of a draft statute for an international criminal court. Although it was aware that such a draft statute could not be produced on such short notice as to be of use in the case of the former Yugoslavia, his Government would prefer the establishment of a permanent court which could act whenever necessary.

58. After commenting on the main characteristics of the proposed international criminal court, he turned to the question of the court's legal basis, jurisdiction, composition and functioning, as well as prosecution and related matters.

59. With regard to the court's legal basis, his Government endorsed the Working Group's conclusion that an international criminal court should be established by means of a statute incorporated into a treaty among States parties, and should have jurisdiction over individuals accused of having committed a grave international crime.

60. As to jurisdiction, a distinction should be made between the subject-matter jurisdiction and the personal jurisdiction, and a decision should be taken as to whether the court's jurisdiction should be concurrent, exclusive or of a review character.

61. Jurisdiction ratione materiae basically depended on the relationship between the draft Code of Crimes against the Peace and Security of Mankind and the proposed international criminal court. The central issue was whether the court should have jurisdiction over some or all of the crimes defined as such in the Code, over crimes defined as such in other treaties and conventions, or even over crimes not yet defined as such in treaties or conventions In that respect, the Working Group had assumed that when a State became party to the statute of the court, it would stipulate the crimes in respect of which it accepted the court's jurisdiction. A number of members of the Commission had also argued that acceptance of the statute did not automatically imply acceptance of the court's jurisdiction over all the crimes defined in the Code. Linking the statute too closely to the Code would constitute an obstacle to States becoming party to it. Some members of the Commission had, however, underlined the close link between the Code and the court. Other members had regarded it as desirable that States should in any event automatically recognize the court's jurisdiction over a number of the crimes defined in the Code; they would then be free to decide whether or not to recognize its jurisdiction over other crimes.

62. As to the question of whether the court's jurisdiction extended to acts not defined as crimes in international conventions or treaties, but recognized as such under general international law or customary law or in certain resolutions of the Security Council, the Working Group's response had, in principle, been negative. He noted that some members of the Commission had been of the opinion that the application of the principle nullum crimen sine lege necessitated a restricted jurisdiction; his Government agreed that that

(Mr. Bos, Netherlands)

principle implied that only crimes defined in international conventions could be tried by the court.

63. With regard to the competence of the court, he said that if the draft Code was to be accompanied by an international law enforcement system with world-wide validity, the crimes to be included in it should meet certain requirements. In view of the reluctance of States to surrender powers in the field of criminal law and criminal law enforcement, it must be assumed that for the time being it would be possible only in exceptional cases to establish a form of international criminal law enforcement. His Government therefore felt that a form of world-wide criminal law enforcement was possible and desirable only in the case of crimes that contravened the elementary humanitarian principles generally accepted by the world community, crimes that were of such a nature that only international enforcement might offer some form of redress and crimes for which individuals could be regarded as accountable, regardless of whether the individual had acted in a public capacity. In the light of those criteria, his Government believed that the Code should include only the crimes of aggression, genocide, systematic or mass violations of human rights and serious war crimes.

64. The court's jurisdiction ratione materiae should be limited to the crimes defined in the code, but should extend to all of the crimes defined therein. The Code represented an evolution of international law not so much because it defined a number of acts as criminal but because it was to be accompanied by a system of international enforcement. In the view of his delegation, if the system was to be feasible, the Code should initially include only a limited list of crimes, thereby making a minimal encroachment on the national jurisdiction of States. For that reason, it did not advocate a Code which only defined crimes and did not provide for an enforcement mechanism. The court should have compulsory jurisdiction which each State party to the statute would be obliged to accept ipso facto and without further agreement; his Government therefore did not endorse the view of some members of the Commission and of the Working Group that recognition of the jurisdiction of the court should be optional for the time being.

65. On the question of whether the court should have exclusive competence, competence concurrent with that of national courts or the power of review only, the Commission had largely been of the opinion that the court should not have review powers. However, on the matter of whether its competence should be exclusive or concurrent, a number of members of the Commission had been in favour of the court being granted exclusive competence in the case of a limited number of serious crimes. His Government would therefore advocate a system which might be described as preferential jurisdiction; that meant that the court would be competent as soon as an individual was accused of having committed one of the crimes defined in the Code. However, if a case was not brought before the international criminal court, national courts would be, or would again be, competent to try the suspect. If the case was brought before the international criminal court, it would give judgement at first and sole instance.

(Mr. Bos, Netherlands)

66. In some cases, ensuring or promoting the court's right to exercise jurisdiction over individuals accused of having committed one of the crimes defined in the Code gave rise to a great many problems which would occur when drawing up the statute. Those problems included: whether the transfer of a suspect to the court constituted a form of extradition or a legal device sui generis; the relationship between the court's request for the transfer of a suspect and the request of another country for his extradition; and whether provision should be made for suspects to be tried in absentia.

67. In the opinion of his Government, the inclusion in national legislation of provisions recognizing universal jurisdiction in respect of the crimes defined in the Code, together with the preferential system of jurisdiction it advocated, would help considerably to make it possible for such crimes to be prosecuted before the international criminal court. In practice, however, situations would always arise in which a suspect was not transferred to the international criminal court by the country under whose jurisdiction he fell, especially in the case of States which were not party to the Code.

68. In relation to the prosecution of persons suspected of acts of aggression, the problem of the relationship between the court and the Security Council could arise. In that respect, many members of the Commission had taken the view that if the Security Council had expressed no opinion as to whether a specific act might be regarded as aggression, the court would be at liberty to determine the matter. However, opinion had been divided in the Commission as to what the consequences would be if the Security Council did express an opinion. His Government considered that regardless of whether the Security Council had considered the political question of whether a State was guilty of aggression, the court would be completely free to consider the legal question of whether an individual was guilty of the same crime. However, a pronouncement by the Security Council to the effect that an act of aggression had been perpetrated was so exceptional and had such far-reaching consequences that it must be deemed impossible for the court to reach a different decision. For that reason, his Government did not regard it as necessary for the Security Council to be assigned a specific procedural role in prosecutions relating to alleged acts of aggression.

69. In the opinion of his Government, procedure should be drawn up in accordance with the principles laid down in article 8 of the Code. In addition, his Government agreed with some members of the Commission that the court's procedure should fulfil the requirements contained in the universal human rights conventions, in particular those contained in articles 14 and 15 of the International Covenant on Civil and Political Rights. Currently, his Government was unable to answer the question as to whether the court should also be permitted or even obliged to apply national law, for example the law of the country in which the trial was to be conducted or in which the crime had been perpetrated, since much depended on the decisions that were made concerning the functioning of the court.

(Mr. Bos, Netherlands)

70. His delegation endorsed the Commission's view that a prosecutor's office should be established with responsibility for the prosecution of suspects before the court. The Commission rightly pointed out that procedure would depend too much on the capacities and wishes of individual States if they themselves were to be responsible for prosecutions. Smaller States, especially, would encounter problems.

71. In the opinion of his Government, the prosecutor's office could submit an application to the international criminal court (a) of its own accord, for example as a result of information provided by a State in which case, the prosecutor's office should accept information from government sources only; (b) in accordance with a decision of the United Nations General Assembly, in which case the prosecutor's office should be obliged to institute prosecution proceedings. Since there was no veto over the decisions of the General Assembly, it would, in principle, be possible to prosecute nationals of States that were Permanent Members of the Security Council; (c) in response to an order issued by the international criminal court, which could be issued at the request of a State, should the prosecutor's office not wish to institute prosecution proceedings on the basis of information provided directly by that State.

72. The number of countries entitled to bring a case before the court or to agree to a case being brought before the court should not be too limited. Ultimately, the crimes to be included in the draft Code should be those which were universally recognized and subject to universal jurisdiction in accordance with national legislation. Accordingly, any country which was a party to both the Code and the Statute should be able to submit a case to the Prosecutor's Office; it was not necessary that a State should have an interest or be involved in the crime in question. Further consideration should be given to ways in which the Prosecutor's Office could make use of the services of national judicial bodies and/or prosecutorial organs. Regulations governing such international judicial assistance must be elaborated in order to ensure the proper functioning of the court and the Prosecutor's Office.

73. In accordance with the principle nulla poena sine lege, the draft Code must provide for penalties; as the Code applied only to very serious crimes, it would be sufficient to impose similar penalties for all crimes. The penalties might range from prison sentences and measures restricting freedom of movement to the confiscation of assets obtained, for example, through the commission of a crime. His Government would oppose the inclusion of the death penalty in the draft Code in view of the trend towards its abolition and the possibility that some States might be prevented from becoming parties to the Code by the provisions of national and international law.

74. The implementation of the penalties to be imposed on convicted persons also required further attention. His Government agreed that prison sentences should be served in accordance with the United Nations Minimum Standard Rules

(Mr. Bos, Netherlands)

for the Treatment of Prisoners. The Netherlands also endorsed the view that a separate, permanent, international prison facility would be too costly and that prison sentences must therefore be served in the penal institutions of States parties to the Code.

75. With regard to the composition of the court, his Government agreed that, in the first phase of its operations, at least, the court should not be a standing full-time body. It should consist of from five to seven independent judges chosen in accordance with the procedures used for the International Court of Justice. While the court should be independent of the International Court of Justice, that did not imply that judges of the International Court of Justice might not also act in the same capacity on the international criminal court, or that other forms of joint organization might not underscore the universal character of the international criminal court.

76. Lastly, the Prosecutor's Office should consist of a Procurator-General, appointed by the General Assembly, assisted by one or more Advocates-General and a small support staff. The Commission was of the view that the Secretary-General's role as chief administrative officer of the United Nations would prohibit his functioning officially as chief of the Prosecutor's Office because of the objectivity which the Secretary-General must maintain in discharging his responsibilities under the Charter of the United Nations.

77. Mr. WILLIAMSON (United States of America) said that the Commission's report (A/47/10) contained an excellent legal analysis of some of the issues connected with the establishment of an international criminal court and that it was an essential step towards the creation of such an institution. The report exemplified the kind of relationship which should exist between the Commission and the General Assembly.

78. Nevertheless, the United States had, in its preliminary review of the report, identified several important issues that the Commission had not addressed. In view of the importance of the subject and the complexity of the issues addressed in the report, the United States believed that it was neither necessary nor desirable for the Sixth Committee or the General Assembly to request further work by the Commission on the possible establishment of an international criminal court at the current session.

79. The United States believed that individual States must take a firm stand on the question of whether the elaboration of a draft statute for an international criminal court was a worthwhile task; the United States believed that requesting the Commission to prepare such a draft statute would not serve the interests of either the Assembly or the international community unless Member States were committed to its outcome.

80. Member States should be given the opportunity to review carefully the report and its implications and to share their views with the Committee. Accordingly, the United States proposed that the Committee should adopt a

(Mr. Williamson, United States)

resolution requesting Governments to provide written comments on the report and requesting the Secretary-General to circulate those comments so that the Committee could consider them prior to the forty-eighth session of the General Assembly, at which time a decision could be taken on how best to proceed.

81. He stressed that his country was not necessarily opposed in principle to the establishment of an international criminal court. Rather, the United States wished to ensure that an international criminal court would not have the effect of undermining national and international efforts to control crime, including terrorism and drug trafficking. Flaws in the constituent instruments of international institutions tended to become magnified over time and such instruments were extremely difficult to amend. For that reason, it was particularly important that the Commission should avail itself of the views of Governments before beginning the preparation of a draft statute for an international criminal court.

82. Mr. JACOVIDES (Cyprus) said that the annual consideration by the Sixth Committee of the report of the International Law Commission (A/47/10) offered an opportunity to evaluate and comment on the report, to provide answers to questions of legal policy where the Commission required guidance from the General Assembly and to inject elements of a political approach whenever it was necessary to do so.

83. The Commission's report on the work of its forty-fourth session was of high quality, was relatively short and had been made available in good time. Paragraphs 11 to 14 outlined the Commission's work during the first year of its new members' term of office, the work had been focused on the draft Code of Crimes against the Peace and Security of Mankind and, in particular, the question of an international criminal jurisdiction; State responsibility, with special emphasis on the issue of countermeasures; and further consideration of the topic "International liability for injurious consequences arising out of acts not prohibited by international law". It had been necessary to postpone consideration of the topic "Relations between States and international organizations" for the reasons explained in the report. His delegation noted, in particular, paragraph 15 of the report, in which the Commission requested a clear indication by Governments as to whether it should embark on the elaboration of a draft statute of an international criminal court.

84. With regard to chapter II, Cyprus believed that the draft Code of Crimes against the Peace and Security of Mankind, adopted by the Commission on first reading in 1991, was a complete legal instrument encompassing three essential elements, namely, crimes, penalties and jurisdiction. Its main purpose could and should be to deter and to punish current and future violators of its provisions; that conviction had been strengthened by recent developments in the world. The instrument should be not only comprehensive, but also flexible and defensible, so as to ensure the widest possible acceptance and effectiveness. To that end, the Commission should examine more closely some aspects referred to in the comments and observations of Governments.

(Mr. Jacovides, Cyprus)

85. His delegation appreciated the Special Rapporteur's efforts to grapple with the difficult and complex issues entailed by the establishment of an international criminal jurisdiction, namely, the law to be applied, the jurisdiction of the court rationae materiae, complaints before the court, proceedings relating to compensation, handing over the subject of criminal proceedings to the court and the double hearing principle. It was regrettable that, for several years, the General Assembly had not provided the clear guidance and mandate which the Commission needed, as international developments warranted a much clearer and more positive response. The Gulf war, the situation in the Libyan Arab Jamahiriya and appeals from influential figures, as well as the renewed efforts of scholars and academics and the recent initiatives relating to the situation in the former Yugoslavia, had created sufficient momentum to break through the barriers of vacillation and indecision. In that spirit, the Commission had established a Working Group on the question of an international criminal jurisdiction, which had worked productively and had prepared the substantive report cited in full in paragraphs 393 to 557 of the Commission's report.

86. His delegation wished to make its position clear on two points. With regard to the relationship between the proposed court and the Code, it was of the view that both were necessary, feasible and desirable. The question remained, however, of who could be tried under international criminal jurisdiction, the State or the individual. Despite the considerable differences of opinion on the matter, draft article 5 of the Code, which had been adopted the previous year and corroborated by the commentaries on article 5 of the Code and on article 19 of the draft articles on State responsibility, clearly stated that the prosecution of an individual for a crime against the peace and security of mankind did not relieve a State of responsibility under international law for an act or omission attributed to it. The State thus remained responsible and was unable to exonerate itself from responsibility by invoking the prosecution or punishment of the individuals who had committed the crime. It could, moreover, be obliged to make reparation for injury caused by its agents, which provided the link between the items of the Code and State responsibility.

87. With regard to the Working Group's report, his delegation appreciated the work done, the considerations involved and the conclusions summarized in paragraph 11. Cyprus would have been happier if the approach had been less modest and if the recommendation had been for a court with compulsory and exclusive jurisdiction that was tied, although not exclusively, to the Code of crimes. Nevertheless, the door was left open for subsequent expansion, once the criminal jurisdiction was established and had proved its practicability. It was currently important for the Committee to accept that the structure suggested by the Commission's Working Group was workable and that the General Assembly should give a clear mandate to the Commission to proceed with the elaboration of a Draft Statute for the proposed international court.

(Mr. Jacovides, Cyprus)

88. With regard to Chapter III of the Report on "State responsibility", the delegation of Cyprus was pleased with the progress achieved by the Commission. State responsibility had been transformed from the traditional context of dealing primarily with injury to aliens to its current and much broader context, which covered the interests of international public order and of the whole international community. There was still scope for its progressive development and he urged the Commission to continue to promote contemporary notions of international law, such as jus cogens, obligations erga omnes, and action against international crimes.

89. With regard to the legal regime of countermeasures, his delegation would confine itself to the following comments: (a) the scope of countermeasures should be narrowly defined, since they could lend themselves to abuse at the expense of weaker States; (b) countermeasures should not be punitive, but aimed at restitution and reparation or compensation; (c) countermeasures should be subject to a third-party settlement procedure and should be applied, if at all, objectively and not subjectively or abusively; (d) the other peremptory norms of international law (jus cogens) could not be subject to derogation equally in the case of countermeasures; and (e) other substantial limitation factors, such as violations of basic human rights, were also applicable.

90. In connection with the quality of the material on those issues which had been included in the report of the Special Rapporteur, his delegation wished to stress in particular the following elements: the importance of third-party dispute settlement procedures; the absolute prohibition of countermeasures involving the use of armed force, which was prohibited under Article 2 (4) of the Charter and the principle of jus cogens.

91. With regard to the articles proposed by the Special Rapporteur in his fourth report, he considered, firstly, that in draft article 13 on "Proportionality", the expression "not to be disproportionate" was preferable to the wording "not be out of proportion" and, secondly, that draft article 14 should indicate that the prohibition of the threat or use of force was a peremptory norm par excellence, since, as currently worded, the draft article created the impression that the prohibition was in a different category.

92. With reference to Chapter IV of the Report on "International liability for injurious consequences arising out of acts not prohibited by international law", his delegation had taken note of its consideration by the Commission and the conclusions reached. The final Chapter of the report contained even more interesting material than usual.

93. He welcomed the decision on the planning of the Commission's activities for the quinquennium. In that connection, he applauded the Commission's targets for that period with respect to the law of non-navigational uses of international watercourses, the draft Code of Crimes against the Peace and Security of Mankind, and State responsibility.

(Mr. Jacovides, Cyprus)

94. His delegation noted with approval the work undertaken by the Commission in its long-term programme of work. In previous debates on the issue, Cyprus had suggested two areas of the law which could be looked into by the Commission: the first concerned the implementation of United Nations resolutions and the legal consequences arising out of their non-implementation, and the second was the legally binding nature of Security Council resolutions, in the context of Article 25 of the Charter, and of the advisory opinion of the International Court of Justice on Namibia. Over a period of years, his delegation had requested the inclusion in the agenda of the General Assembly of an item on implementation of United Nations resolutions. That item appeared on the agenda of the current session of the Assembly and it would be appropriate to consider, even informally, ways and means in which it could be given more concrete content.

95. The Commission's long-term programme of work also provided the opportunity to include among the items to be considered by the Commission in due course the item of the content of the notion of jus cogens or peremptory norms of international law. That principle had been established in 1969 by the Vienna Convention on the Law of Treaties. However its legal content had yet to be defined by an authoritative body. On the basis of the Commission's findings, which could be included in a report or study, and not necessarily in the form of a draft convention, the representatives of States would have the opportunity to express their views, either in the Sixth Committee or through written comments, thereby helping the process of giving exact legal meaning to a principle solemnly accepted and embodied in the above-mentioned convention. In the absence of such a definition, the principle could mean a great deal to some and very little to others, a phenomenon that was not conducive to the objectivity which should characterize a legal principle.

96. He also noted the concrete possibilities discussed in terms of the Commission's contribution to the United Nations Decade of International Law. It was evident that, by its very nature and stature, the Commission should be making a major input to achieving the objectives of the Decade, as it had been doing through its normal work. It also concurred with the Commission's constructive cooperation with outstanding regional bodies, such as the Asian-African Legal Consultative Committee, the European Committee on Legal Cooperation, and the Inter-American Juridical Committee. Nevertheless, there was still scope for closer cooperation with other groups, such as the Non-Aligned Movement and the Commonwealth.

97. Mr. YAMADA (Japan), referring to the changes witnessed in recent years, notably the end of the cold war and the Gulf crisis, said that the international community was in a period of transition from confrontation to cooperation and seeking a new and peaceful world order. As circumstances in the international arena evolved, there was bound to arise new problems which would be difficult, if not impossible, to resolve by resorting to traditional international law. On the other hand, should a country choose to ignore international law, there would be even greater need for solidarity on the part

(Mr. Yamada, Japan)

of the international community to ensure that the accepted rules of international law were duly observed.

98. In order to construct a new order based on peaceful and stable relations among nations, it was necessary to advance the rule of law and, towards that end, the international community needed to pursue twin objectives. Firstly, it must promote the progressive development and codification of international law in order to ensure an adequate response to new needs. In that connection, it was important to promote the elaboration of rules in new fields, such as the human environment, in which increasingly serious problems were anticipated in the following century. Secondly, it was necessary to ensure that the accepted rules of international law were observed. Towards that end, the international community should stand united in countering all violations of international law which could threaten the foundations of the world order and should strive to eliminate the discrepancies between multilateral treaty provisions and the domestic laws of States parties to the treaties.

99. In light of those circumstances, the task of the Commission in promoting the progressive development and codification of international law was becoming even more crucial. Instead of focusing on the codification of customary international law, the Commission must in future place greater emphasis on the progressive development of international law and effectively address the newly emerging needs of the rapidly changing international community. Indeed, the degree to which the Commission successfully fulfilled that task would determine its raison d'être in the future.

100. The Commission had several ongoing works entrusted to it by the General Assembly and the time had come to give new life to the Commission and to prepare its long-term programme. He hoped that during the current quinquennium the Commission would be able to finalize the draft articles on international watercourses and the draft Code of Crimes against the Peace and Security of Mankind, as well as the first reading of the draft articles on State responsibility and international liability for injurious consequences arising out of acts not prohibited by international law. If the General Assembly so decided, it could embark on the item of the establishment of an international criminal court.

101. The Commission's consideration of the possible establishment of an international criminal court revealed the divergencies of views among its members. The General Assembly should therefore take a decision on the project and should do so in a clear-cut manner.

102. The idea of establishing an international criminal court had been around for a long time and represented the final goal of cooperation among States for international law enforcement in criminal matters. History showed, however, that that was no easy matter. For many years, States had not been ready to accept such a mechanism and, in order to ensure the suppression and punishment of certain serious international crimes, the international community had made

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efforts to develop multilateral treaties by which to oblige States to prosecute and punish such crimes by sending the case to an internal court or to extradite offenders. Particularly in the case of terrorism, States preferred to establish norms to adjust or modify their national criminal codes and to secure national jurisdiction over the crime, instead of establishing an international criminal court outright.

103. However, he sensed that both Governments and world public opinion recognized the gross inadequacy of the current international criminal justice system and the need to establish a special court. The time had come to instruct the Commission to draft a Statute and to propose a concrete and realistic way leading to its establishment. He hoped that at its current session, the General Assembly would give a new mandate to the Commission in order to enable it to proceed with the drafting of the Statute.

104. As for the method of creating the court, he agreed that the court should be created by a Statute in the form of a treaty agreed to by States parties. He supported the Working Group's conclusion that, at least in its first phase of operations, the court should not be a standing body since, until it proved its effectiveness, it would thus avoid the greater cost incurred by a permanent body. However, there was no doubt that a permanent court would better ensure the independence and impartiality of its judgements and, since it dealt with criminal cases, the model of a court of arbitration called into operation whenever required could not be automatically applied. The nature of the court, whether it was desirable to set it up as a full time body or not, should be decided after taking into account the nature and range of its jurisdiction, so that the court could respond properly to the needs of the international community.

105. The idea that, at least in the beginning, the court should have neither compulsory nor exclusive jurisdiction was a realistic one and would facilitate the acceptance of its Statute by a larger number of States. Even if in the course of negotiations States considered it opportune to set up compulsory jurisdiction on some extremely serious crimes, the range of such cases must be carefully limited because such a determination could give rise to serious conflicts with national criminal jurisdictions, especially in cases of crime whose suppression was ensured by a developed international cooperation mechanism. The nature and range of "jurisdiction" must be carefully studied while taking into due consideration the effectiveness of the existing system and guaranteeing the non-disturbance of the well-established function of that system.

106. With regard to the relationship between the court and the draft Code of Crimes against the Peace and Security of Mankind, Japan supported the proposal of the Working Group that the Statute of the Court and Code must be separate legal instruments. Although it was desirable that States should become parties to both instruments, the international community should start from the point of view that the separation could serve to increase the number of States willing to become parties to at least one of them.

(Mr. Yamada, Japan)

107. The Working Group had also considered how it might best make use of the International Court of Justice. In that connection, taking into account the reputation which the Court enjoyed, it might be a good idea to study further the possibility that it could play a role in criminal matters. In doing so, an effort should be made not to disturb the function and the role which the Court currently played with the full support of the international community.

108. Lastly, he hoped that the Commission would proceed with prudence to ensure the widest possible acceptance of the Statute. Japan supported the approach of the Working Group to first establish a flexible and supplementary facility for States; a more extensive and ambitious plan could be discussed at a later stage.

The meeting rose at 1.15 p.m.